

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ESTEBAN PEREZ, FELIPE GALINDO, and DELFINO LOPEZ,  
Plaintiffs,  
-against-

Case No. 1:17-cv-07837 (RJ5)

50 FOOD CORP. (D/B/A SILO CAFE) and ANDREW SUNG  
(A.K.A. HWAN SEUNG SUNG),  
Defendants.

-----X  
Bee Reporting Depo Center  
89-00 Sutphin Boulevard  
Jamaica, New York 11435  
May 22, 2018  
10:30 A.M.

DEPOSITION of MINCHUL  
KIM, the 30(b)(6) Witness on behalf of the  
Defendant herein, 50 FOOD CORP. (D/B/A SILO  
CAFE), taken by the attorney for the Plaintiff,  
through a Korean Interpreter, pursuant to  
Notice, and held before Kathleen Anderson, a  
Notary Public of the State of New York, at the  
above stated time and place.

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IT IS HEREBY STIPULATED AND AGREED by and  
between the attorneys for the respective  
parties hereto, that the sealing, filing and  
certification of the transcript of the within  
examination before trial will be and the same  
hereby are waived.

IT IS FURTHER STIPULATED AND AGREED that  
all objections, except as to the form of the  
question, will be reserved to the time of  
trial;

IT IS FURTHER STIPULATED AND AGREED that  
the within examination may be signed before any  
Notary Public with the same force and effect as  
if signed and sworn to before this Court.

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2 APPEARANCES:  
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CATHOLIC MIGRATION SERVICES  
Attorneys for Plaintiff(s)  
47-01 Queens Boulevard, Suite 201  
Sunnyside New York 11104  
BY: MAGDALENA BARBOSA, ESQ.

VARACALLI & HAMRA, LLP  
Attorney for Defendant(s)  
32 Broadway, Suite 1818  
New York New York 10004

BY: DOUGLAS VARACALLI, ESQ.

ALSO PRESENT:

GIRA HONG, Korean Interpreter

2

1 M. KIM

2 GIRA HONG,

3 The Interpreter herein, having been duly  
4 sworn by Kathleen Anderson, a Notary Public in  
5 and for the State of New York, to interpret the  
6 questions from English into Korean, and the  
7 answers from Korean into English, interpreted  
8 as follows:

9 MINCHUL KIM,

10 The witness herein, having been first  
11 duly sworn by Kathleen Anderson, a Notary  
12 Public in and for the State of New York, was  
13 examined, and testified as follows:

14 DIRECT EXAMINATION

15 BY MAGDALENA BARBOSA, ESQ.:

16 Q What is your name?

17 A Minchul Kim.

18 Q What is your address?

19 A [REDACTED] floor,

20 [REDACTED] 64.

21 Q Good morning, Mr. Kim. My name is  
22 Magdalena Barbosa. I'm the attorney for  
23 Esteban Perez, Felipe Galindo and Delfino  
24 Lopez. They have filed a lawsuit in federal  
25 court against 50 Food Corp., also known as Silo

4

<p>1 M. KIM</p> <p>2 Café and Andrew Sung. You have been noticed to</p> <p>3 sit for a deposition today for two reasons.</p> <p>4 Number 1, you will be giving testimony as a</p> <p>5 representative of 50 Food Corp. And then later</p> <p>6 in the day, once we are done with the questions</p> <p>7 for 50 Food Corp., you will be responding to</p> <p>8 questions in your individual capacity. Do you</p> <p>9 understand that?</p> <p>10 A Yes.</p> <p>11 Q So this accident is being recorded by</p> <p>12 a court reporter. Her job is to record my</p> <p>13 questions and your answers. She can only</p> <p>14 record verbal responses, so just be mindful not</p> <p>15 to nod your head in response. Please provide a</p> <p>16 verbal response; do you understand that?</p> <p>17 A Yes.</p> <p>18 Q Have you ever been deposed before?</p> <p>19 A No.</p> <p>20 Q Have you ever testified in a court</p> <p>21 proceeding before?</p> <p>22 A I have not.</p> <p>23 Q Have you ever participated in a</p> <p>24 lawsuit before as a defendant or a plaintiff?</p> <p>25 A Never.</p> <p style="text-align: right;">5</p>	<p>1 M. KIM</p> <p>2 besides Minchul Kim?</p> <p>3 A Yeah. At store I'm known as Dennis.</p> <p>4 Q What is your date of birth?</p> <p>5 A XX/XX/1975.</p> <p>6 Q Where were you born?</p> <p>7 A From South Korea.</p> <p>8 Q When did you move to the United</p> <p>9 States?</p> <p>10 A 2001.</p> <p>11 Q Have you lived in the United States</p> <p>12 since 2001?</p> <p>13 A Yes.</p> <p>14 Q Here in New York City?</p> <p>15 A Queens.</p> <p>16 Q What is your educational background?</p> <p>17 A I graduated from college in Korea,</p> <p>18 and here in the U.S. I went to community</p> <p>19 college.</p> <p>20 Q Did you major in any particular field</p> <p>21 of study?</p> <p>22 A Food service and management.</p> <p>23 Q Did you receive a degree?</p> <p>24 A I received a diploma from community</p> <p>25 college.</p> <p style="text-align: right;">7</p>
<p>1 M. KIM</p> <p>2 Q Let me just go back to a few more</p> <p>3 basic instructions for today. I just want to</p> <p>4 make sure that you know if you don't understand</p> <p>5 any of my questions, you should ask for</p> <p>6 clarification from me; do you understand?</p> <p>7 A Thank you.</p> <p>8 Q Do you understand that you are under</p> <p>9 oath and you must respond to my questions</p> <p>10 truthfully?</p> <p>11 A Yes.</p> <p>12 Q Is there anything that might prevent</p> <p>13 you from testifying truthfully today?</p> <p>14 A None.</p> <p>15 Q For example, are you under any type</p> <p>16 of medication that might impact your ability to</p> <p>17 testify truthfully today?</p> <p>18 A None.</p> <p>19 Q Will you please let me know if you</p> <p>20 need to take a break at any point today?</p> <p>21 A I will.</p> <p>22 Q And do you have any questions before</p> <p>23 I continue?</p> <p>24 A No, I don't.</p> <p>25 Q Have you ever gone by any other names</p> <p style="text-align: right;">6</p>	<p>1 M. KIM</p> <p>2 Q What community college did you</p> <p>3 attend?</p> <p>4 A LaGuardia.</p> <p>5 Q Have you ever been arrested either</p> <p>6 here in the United States or elsewhere?</p> <p>7 A None whatsoever.</p> <p>8 THE INTERPRETER: I just asked him</p> <p>9 to speak a bit more loudly.</p> <p>10 MS. BARBOSA: Okay.</p> <p>11 Q Can you tell me what you did to</p> <p>12 prepare for today's deposition?</p> <p>13 A None.</p> <p>14 Q Did you speak with Mr. Sung, Mr.</p> <p>15 Andrew Sung regarding this deposition?</p> <p>16 A No.</p> <p>17 Q Does he know that you're here this</p> <p>18 morning being deposed in this matter?</p> <p>19 A Yes.</p> <p>20 Q Did he ask you to appear on behalf of</p> <p>21 50 Food Corp.?</p> <p>22 A I'm a bit confused what you are</p> <p>23 asking.</p> <p>24 Q Did you say that Mr. Sung knows</p> <p>25 you're being deposed here; correct?</p> <p style="text-align: right;">8</p>

<p>1 M. KIM</p> <p>2 A Yes.</p> <p>3 Q How does he know?</p> <p>4 A Yeah, well, I received some summons</p> <p>5 to be here and I presented that to Mr. Sung and</p> <p>6 that's how he knows that I need to be here</p> <p>7 today.</p> <p>8 Q When you presented the notice to Mr.</p> <p>9 Sung, what did you discuss regarding the</p> <p>10 deposition with him?</p> <p>11 A Oh, he just said that you will just</p> <p>12 be a witness, provide honest answers.</p> <p>13 Q Did he say anything else?</p> <p>14 A No.</p> <p>15 Q Did he give you any tips or</p> <p>16 recommendations about how to, I guess, perform</p> <p>17 at today's deposition?</p> <p>18 A None.</p> <p>19 Q Did he show you any documents to</p> <p>20 prepare for today's deposition?</p> <p>21 A None.</p> <p>22 Q So the only thing that he said to you</p> <p>23 regarding this deposition is that you will be a</p> <p>24 witness and that you just need to answer</p> <p>25 truthfully?</p> <p style="text-align: right;">9</p>	<p>1 M. KIM</p> <p>2 A Yes, and me.</p> <p>3 Q What's the name of the church?</p> <p>4 A Promise Church. Promise Church.</p> <p>5 Q Is that located here in New York</p> <p>6 City?</p> <p>7 A Promise Church is in Flushing.</p> <p>8 Q When did you first hear about the</p> <p>9 job?</p> <p>10 A I really can't remember when, but I</p> <p>11 think approximately in -- somewhere in the year</p> <p>12 2008 and I remember that because I had just</p> <p>13 gotten married and that's how I recall that</p> <p>14 incident.</p> <p>15 Q Okay. What did Mr. Nah tell you</p> <p>16 about 50 Food Corp.?</p> <p>17 A And that the owner, Mr. Sung, was</p> <p>18 looking for someone to hire.</p> <p>19 Q And shortly after that, did you meet</p> <p>20 with Mr. Sung to speak with him about the</p> <p>21 position?</p> <p>22 A Yes.</p> <p>23 Q And what kind of job was Mr. Sung</p> <p>24 looking to fill?</p> <p>25 A Manager.</p> <p style="text-align: right;">11</p>
<p>1 M. KIM</p> <p>2 A Yes.</p> <p>3 Q And he said nothing else?</p> <p>4 A No.</p> <p>5 Q When did you first begin working for</p> <p>6 50 Food Corp.?</p> <p>7 A 2008.</p> <p>8 Q When in 2008?</p> <p>9 A I think maybe in October.</p> <p>10 Q How was it that you ended up working</p> <p>11 for 50 Food Corp.?</p> <p>12 A I was introduced to that job from</p> <p>13 acquaintance.</p> <p>14 Q Who was the acquaintance?</p> <p>15 A A friend I know from church.</p> <p>16 Q What's this friend's name? Do you</p> <p>17 recall this friend's name, Mr. Kim?</p> <p>18 A His first name is K A N G, M Y O, his</p> <p>19 last name is N A H.</p> <p>20 Q What is your understanding of how Mr.</p> <p>21 Nah knew about 50 Food Corp.?</p> <p>22 A The boss is also a member of the</p> <p>23 church congregation.</p> <p>24 Q So Mr. Sung is a member of the same</p> <p>25 church as Mr. Nah?</p> <p style="text-align: right;">10</p>	<p>1 M. KIM</p> <p>2 Q Was it Mr. Sung who hired you?</p> <p>3 A Yes, he did, through Mr. Nah's</p> <p>4 introduction.</p> <p>5 Q But you did meet eventually with Mr.</p> <p>6 Sung in person; is that right?</p> <p>7 A Yes.</p> <p>8 Q Did Mr. Sung ask you about your</p> <p>9 experience in managing a deli?</p> <p>10 A Yes.</p> <p>11 Q Would it be correct to characterize</p> <p>12 50 Food Corp., is a deli or should I call it a</p> <p>13 café?</p> <p>14 A It's -- yeah, a deli style.</p> <p>15 Q Prior to starting at 50 Food Corp.,</p> <p>16 what were you doing for work?</p> <p>17 A I worked at a deli.</p> <p>18 Q What was your position at that deli?</p> <p>19 A I used to make sandwiches.</p> <p>20 Q Did your job include any management</p> <p>21 of the business?</p> <p>22 A Okay, then I wasn't actually involved</p> <p>23 in management, but as I said before, I studied</p> <p>24 it, food management, and so I was aware about</p> <p>25 how to perform management tasks.</p> <p style="text-align: right;">12</p>

<p>1 M. KIM</p> <p>2 Q So you were hired by Mr. Sung to be</p> <p>3 the manager at 50 Food Corp.; is that right?</p> <p>4 A Yes.</p> <p>5 Q That was your title when you started?</p> <p>6 A Yes.</p> <p>7 Q What do you know of the previous</p> <p>8 manager of 50 Food Corp., before you began?</p> <p>9 A I don't know.</p> <p>10 Q Was there a manager before you</p> <p>11 started?</p> <p>12 A I believe there was one manager</p> <p>13 working there prior to me. Prior to myself.</p> <p>14 Q Do you know that manager's name?</p> <p>15 A I don't.</p> <p>16 Q Do you know what happened to that</p> <p>17 manager?</p> <p>18 A I do not know.</p> <p>19 Q When you first began working at 50</p> <p>20 Food Corp., do you recall what your</p> <p>21 compensation was?</p> <p>22 A It's hard to recall exactly how much</p> <p>23 that was.</p> <p>24 Q Can you estimate?</p> <p>25 A 800.</p> <p style="text-align: right;">13</p>	<p>1 M. KIM</p> <p>2 beginning at 50 Food Corp., you worked at a</p> <p>3 deli making sandwiches, but you also had some</p> <p>4 management responsibilities; is that correct?</p> <p>5 A That is not entirely correct.</p> <p>6 Q Can you tell me what was incorrect</p> <p>7 about that?</p> <p>8 A What I had said about that job, what</p> <p>9 I meant to say is that because I studied food</p> <p>10 and management I knew it, I knew how to manage</p> <p>11 that subject.</p> <p>12 Q Oh, okay, that's fine. I apologize</p> <p>13 for misunderstanding.</p> <p>14 So at the deli you had no management</p> <p>15 responsibilities, you just made sandwiches; is</p> <p>16 that correct?</p> <p>17 A Yes, and what I do want to elaborate</p> <p>18 that I did help out as assistant manager</p> <p>19 occasionally, but I was not responsible</p> <p>20 entirely to manage anything.</p> <p>21 Q What were your tasks when you helped</p> <p>22 out as an assistant manager?</p> <p>23 A Yeah, things along the line of making</p> <p>24 orders, placing orders.</p> <p>25 Q Did you have any responsibilities for</p> <p style="text-align: right;">15</p>
<p>1 M. KIM</p> <p>2 Q \$800 per week?</p> <p>3 A Yes.</p> <p>4 Q Did Mr. Sung pay you?</p> <p>5 A Yes.</p> <p>6 Q Were you paid in cash or by check?</p> <p>7 A I believe it was paid half in cash</p> <p>8 and half in check.</p> <p>9 Q I assume your compensation has</p> <p>10 changed over the years; is that correct?</p> <p>11 A That is correct.</p> <p>12 Q Could you tell me what your</p> <p>13 compensation is now?</p> <p>14 A 1,150.</p> <p>15 Q Again, are you paid in cash or by</p> <p>16 check?</p> <p>17 A Again, half and half.</p> <p>18 Q In the part that you receive in</p> <p>19 check, are withholdings made?</p> <p>20 A Yes, it's taken out, the tax is taken</p> <p>21 out from there, the check portion.</p> <p>22 Q Okay. Have you ever owned any</p> <p>23 businesses?</p> <p>24 A No.</p> <p>25 Q You indicated earlier that before</p> <p style="text-align: right;">14</p>	<p>1 M. KIM</p> <p>2 any of the employees?</p> <p>3 A None.</p> <p>4 Q Why did you leave?</p> <p>5 A Do I need to explain the reason?</p> <p>6 Q Just briefly, please.</p> <p>7 A Normally, the delis, one works about</p> <p>8 six days only, but that deli was able to work</p> <p>9 only five days a week and I liked that because</p> <p>10 I had just gotten married. That's the reason.</p> <p>11 Q I'm sorry, so what was the reason,</p> <p>12 the reason was because you wanted to work more</p> <p>13 or less?</p> <p>14 A Because I'm saying that because I had</p> <p>15 gotten married, I needed to have more time with</p> <p>16 my wife.</p> <p>17 Q Got it. Okay, thank you. Could you</p> <p>18 tell me what the name of this deli was?</p> <p>19 A Hanover, H A N O V E R. I'm not</p> <p>20 certain about how to spell that name.</p> <p>21 Q Where was Hanover deli located?</p> <p>22 A Lower Manhattan.</p> <p>23 Q Do you recall where in lower</p> <p>24 Manhattan?</p> <p>25 A It was close to Wall Street.</p> <p style="text-align: right;">16</p>

<p>1 M. KIM</p> <p>2 Q When you met with Mr. Sung regarding</p> <p>3 the job at 50 Food Corp., what did he tell you</p> <p>4 about your principal responsibilities as the</p> <p>5 manager of the deli?</p> <p>6 A He said it was very important to</p> <p>7 oversee the employees. He also said that since</p> <p>8 this is my first time working as a manager, he</p> <p>9 said to just take it one at a time, as if he's</p> <p>10 learning something new every day. And that he</p> <p>11 was going to train me.</p> <p>12 Q Did he break down exactly what you</p> <p>13 would be in charge of at the deli?</p> <p>14 A Yes, he did.</p> <p>15 Q You mentioned just a few seconds ago</p> <p>16 that Mr. Sung said that he would train you; is</p> <p>17 that right?</p> <p>18 A Yes.</p> <p>19 Q Was it your understanding that Mr.</p> <p>20 Sung had a lot of experience managing that</p> <p>21 deli?</p> <p>22 A I thought so.</p> <p>23 Q How long did Mr. Sung train you for?</p> <p>24 A It was so long ago, so I'm not so</p> <p>25 certain, but I think that about two months</p> <p style="text-align: right;">17</p>	<p>1 M. KIM</p> <p>2 Sung?</p> <p>3 A Yes, he did.</p> <p>4 Q What did Mr. Sung show you or train</p> <p>5 you about the payroll?</p> <p>6 A He informed me about employees'</p> <p>7 hourly pay, and that there's a 1.5 hours pay</p> <p>8 for overtime. I believe that was the most</p> <p>9 important thing he taught me. And that I need</p> <p>10 to get a signature from the employees upon</p> <p>11 handing over the wages.</p> <p>12 Q Okay. Were the wages of the</p> <p>13 employees already set when you started?</p> <p>14 A Yes.</p> <p>15 Q Was it your understanding that Mr.</p> <p>16 Sung had already set these hourly wage rates</p> <p>17 for the employees at the café?</p> <p>18 A Yes.</p> <p>19 Q You indicated that Mr. Sung advised</p> <p>20 you to have the employees sign; is that</p> <p>21 correct?</p> <p>22 A Yes, because we had paid them and we</p> <p>23 needed the signature.</p> <p>24 Q So the signature would be proof that</p> <p>25 you paid them; is that correct?</p> <p style="text-align: right;">19</p>
<p>1 M. KIM</p> <p>2 would be a good estimate.</p> <p>3 Q Was Mr. Sung present with you at the</p> <p>4 deli each day during those two months?</p> <p>5 A I believe he was always at the store</p> <p>6 when I was working there.</p> <p>7 Q He was always at the store when you</p> <p>8 were working there?</p> <p>9 A I think that for about a year or so</p> <p>10 he was always there when I was working.</p> <p>11 Q During that time, for the first year</p> <p>12 while you were the manager at 50 Food Corp.,</p> <p>13 what did Mr. Sung do?</p> <p>14 A Well, I just want to start by saying</p> <p>15 that during that time, the business was</p> <p>16 extremely slow and so I really can't recall</p> <p>17 precisely what Mr. -- what I saw Mr. Sung do,</p> <p>18 but I remained -- I didn't want to remain in</p> <p>19 office so much, but rather go out to the floor</p> <p>20 and organize displays, things like that.</p> <p>21 Q When you first started at 50 Food</p> <p>22 Corp., did Mr. Kim show you how to run the</p> <p>23 payroll?</p> <p>24 A Yes.</p> <p>25 Q Mr. Sung, I apologize. I meant Mr.</p> <p style="text-align: right;">18</p>	<p>1 M. KIM</p> <p>2 A Yes.</p> <p>3 Q Did he already have a document that</p> <p>4 -- did Mr. Sung already have a document that he</p> <p>5 had created where employees would sign for</p> <p>6 their pay?</p> <p>7 A In my recollection, yes.</p> <p>8 Q Did Mr. Sung instruct you to use the</p> <p>9 same form?</p> <p>10 A I -- my answer is yes, because I had</p> <p>11 to make copies of those forms.</p> <p>12 MS. BARBOSA: So I'm going to mark</p> <p>13 this as Plaintiff's 1.</p> <p>14 (Whereupon, the Notice of Deposition</p> <p>15 was marked as Plaintiff's Exhibit 1 for</p> <p>16 Identification, this date by the</p> <p>17 Reporter.)</p> <p>18 Q Mr. Kim, have you seen this document</p> <p>19 before, the document marked as Plaintiff's</p> <p>20 Exhibit 1?</p> <p>21 (Witness peruses document.)</p> <p>22 A I never have.</p> <p>23 Q I am going to ask you to turn to the</p> <p>24 -- you've never seen this document before?</p> <p>25 A Never.</p> <p style="text-align: right;">20</p>



<p>1 M. KIM</p> <p>2 Q You indicated earlier that when you</p> <p>3 received the notice about this deposition that</p> <p>4 you showed it to Mr. Sung; is that right?</p> <p>5 A What I meant to say is that upon</p> <p>6 receiving the notice for me to appear for</p> <p>7 deposition, I needed to show it to Mr. Sung so</p> <p>8 that I can get a day off for that. That was</p> <p>9 the reason why I showed him.</p> <p>10 Q Oh, okay. At any time did Mr. Sung</p> <p>11 tell you that you would also be giving</p> <p>12 testimony as a representative for 50 Food</p> <p>13 Corp.?</p> <p>14 A No.</p> <p>15 Q Is this the first time that you're</p> <p>16 hearing that you're being deposed as a</p> <p>17 representative of 50 Food Corp.?</p> <p>18 A Upon receiving the notice, in fact</p> <p>19 while I was at work, somebody hand delivered a</p> <p>20 notice for me to appear at the deposition.</p> <p>21 Q When you received that notice, you</p> <p>22 understood that you would be sitting for a</p> <p>23 deposition as a representative of the</p> <p>24 corporation?</p> <p>25 A Not quite to that extent.</p> <p style="text-align: right;">21</p>	<p>1 M. KIM</p> <p>2 deposed as a representative of 50 Food Corp.;</p> <p>3 is that right?</p> <p>4 A I just want to say again that I</p> <p>5 thought I was here for the second reason you</p> <p>6 had mentioned.</p> <p>7 Q Okay. I understand that. So then</p> <p>8 this is the first time that you're hearing that</p> <p>9 you are also a representative for 50 Food</p> <p>10 Corp.? It's a yes or no question.</p> <p>11 A Yes. First time, yes.</p> <p>12 Q So I want to have you take a look at</p> <p>13 the first page of the document in front of you,</p> <p>14 so in the caption of that document it says,</p> <p>15 Notice of Deposition Pursuant to FRCP 30(b)(6);</p> <p>16 do you see that?</p> <p>17 A Yes.</p> <p>18 Q The last two lines on the first page</p> <p>19 of the notice say, 50 Food Corp is requested to</p> <p>20 designate the person or persons most</p> <p>21 knowledgeable and prepared to testify on behalf</p> <p>22 of 50 Food Corp regarding the following topics.</p> <p>23 Okay, turn the page please. Defendant's</p> <p>24 employment practices including, if you want to</p> <p>25 read on, I'm just reading the second page.</p> <p style="text-align: right;">23</p>
<p>1 M. KIM</p> <p>2 Q Is this the first time now, with me</p> <p>3 telling you, that understand that you are</p> <p>4 giving testimony as a representative of the</p> <p>5 corporation, 50 Food Corp.?</p> <p>6 THE INTERPRETER: He wants me to --</p> <p>7 he wants to have the question repeated.</p> <p>8 Q I mentioned at the beginning of this</p> <p>9 deposition that you are here today for two</p> <p>10 purposes. Number 1, I have been told that you</p> <p>11 would be providing testimony today as the</p> <p>12 representative for 50 Food Corp. Number 2, you</p> <p>13 are being deposed in your personal capacity in</p> <p>14 response to the subpoena you were served with</p> <p>15 at Silo Café several weeks ago?</p> <p>16 A Okay. I do recall what you had said</p> <p>17 about those two reasons for my coming here and</p> <p>18 I said -- I answered yes to both, but in</p> <p>19 reality, I thought I was coming here to testify</p> <p>20 as -- on a personal level to just testify the</p> <p>21 truth about what I know. So I didn't feel the</p> <p>22 need to review anything to prepare for this</p> <p>23 deposition.</p> <p>24 Q Okay. Just to confirm, this morning</p> <p>25 is the first time you heard that you would be</p> <p style="text-align: right;">22</p>	<p>1 M. KIM</p> <p>2 Number 1, existing policies and practices for</p> <p>3 compliance with federal, state and local labor</p> <p>4 laws and regulations including, but not limited</p> <p>5 to, minimum wage and overtime laws and spread</p> <p>6 of hours law at 50 Food Corp. Just number 1,</p> <p>7 can you read that to him, please?</p> <p>8 THE INTERPRETER: I will do that.</p> <p>9 One thing I may ask, so you're saying</p> <p>10 these will be the relevant things that</p> <p>11 he's expected to --</p> <p>12 MS. BARBOSA: That's correct.</p> <p>13 THE INTERPRETER: Now it makes more</p> <p>14 sense to me, okay.</p> <p>15 Yes, ma'am.</p> <p>16 Q Do you have knowledge of this topic?</p> <p>17 A Yeah. I feel that I just have</p> <p>18 basics, a basic knowledge about this matter. I</p> <p>19 knew that it would be forty hours for full-time</p> <p>20 and the rate for overtime.</p> <p>21 Q Number 2, do you have knowledge of</p> <p>22 the maintenance of records of employees' work</p> <p>23 hours, wages and other compensation at 50 Food</p> <p>24 Corp.?</p> <p>25 A I was really focusing on the papers</p> <p style="text-align: right;">24</p>

<p>1 M. KIM</p> <p>2 where we had obtained signature in exchange for</p> <p>3 paying wages to the employees.</p> <p>4 Q So the question is really a yes or no</p> <p>5 question.</p> <p>6 A Yes.</p> <p>7 Q Do you have knowledge of looking at</p> <p>8 number 3, the maintenance of employees'</p> <p>9 personnel files at 50 Food Corp.?</p> <p>10 A No.</p> <p>11 Q Do you have knowledge of number 4,</p> <p>12 employment practices including but not limited</p> <p>13 to recruitment, hiring, selection practice,</p> <p>14 transfer or promotion policy benefit provisions</p> <p>15 and grievance process?</p> <p>16 A Yes.</p> <p>17 Q Number 5, do you have knowledge of</p> <p>18 documents issued to and/or signed by employees</p> <p>19 at 50 Food Corp., including but not limited to</p> <p>20 personnel manuals, records of hours worked,</p> <p>21 evaluations, write-ups, warnings and</p> <p>22 disciplinary notices?</p> <p>23 A I remember just giving them verbal</p> <p>24 warnings when needed.</p> <p>25 Q So then you are knowledgeable of this</p> <p style="text-align: right;">25</p>	<p>1 M. KIM</p> <p>2 schedules at 50 Food Corp.?</p> <p>3 A Yes.</p> <p>4 Q I will ask you to turn the page. Do</p> <p>5 you have knowledge of the corporate policy and</p> <p>6 procedures for creating, adjusting and</p> <p>7 maintaining record-keeping of wage and</p> <p>8 compensation records and practices relevant</p> <p>9 this litigation?</p> <p>10 A I was managing those things.</p> <p>11 Q So I understand that you did not look</p> <p>12 at any documents to prepare for this</p> <p>13 deposition; is that correct?</p> <p>14 A I said I had no preparation because I</p> <p>15 felt no need to prepare myself before coming</p> <p>16 here because I thought I would be required to</p> <p>17 testify just whatever I know.</p> <p>18 Q And you feel competent testifying in</p> <p>19 the areas that I just listed a few moments ago;</p> <p>20 is that right?</p> <p>21 A They're fine.</p> <p>22 MS. BARBOSA: Very good. Will you</p> <p>23 mark this as Plaintiff's Exhibit 2?</p> <p>24 (Whereupon, the Plaintiff's First</p> <p>25 Request For Production of Documents and</p> <p style="text-align: right;">27</p>
<p>1 M. KIM</p> <p>2 particular category of information?</p> <p>3 A Yes.</p> <p>4 Q Are you knowledgeable of the methods</p> <p>5 used to calculate compensation of employees at</p> <p>6 50 Food Corp.?</p> <p>7 A Yes.</p> <p>8 Q Are you knowledge of the methods used</p> <p>9 to record employees' work hours including any</p> <p>10 written or computer methods at 50 Food Corp.?</p> <p>11 A Yes.</p> <p>12 Q Are you knowledgeable of the methods</p> <p>13 used to collect deductions of employees'</p> <p>14 compensation and/or fines and penalties at 50</p> <p>15 Food Corp.?</p> <p>16 A Are you referring to in cases of</p> <p>17 employees being late to work?</p> <p>18 Q That could be one reason.</p> <p>19 A In that case I answer yes.</p> <p>20 Q So you have knowledge of deductions</p> <p>21 made to employees' wages for number one,</p> <p>22 lateness, perhaps?</p> <p>23 A Yes.</p> <p>24 Q You have knowledge of employees' work</p> <p>25 schedule and any changes to their work</p> <p style="text-align: right;">26</p>	<p>1 M. KIM</p> <p>2 Interrogatories was marked as Plaintiff's</p> <p>3 Exhibit 2 for identification, this date</p> <p>4 by the Reporter.)</p> <p>5 Q Have you seen this document before?</p> <p>6 (Witness peruses document.)</p> <p>7 A I believe I had seen this before.</p> <p>8 Q For the record, Plaintiff's Exhibit</p> <p>9 number 2 is Plaintiff's First Request for</p> <p>10 Production of Documents and Interrogatories.</p> <p>11 When do you think you saw this</p> <p>12 document before?</p> <p>13 A I do recall seeing this when it came</p> <p>14 in the mail and the owner, Mr. Sung, was not</p> <p>15 there, so I opened the mail.</p> <p>16 Q What did you do with it after you saw</p> <p>17 it?</p> <p>18 A I called the boss, Mr. Sung.</p> <p>19 Q What did he tell you to do?</p> <p>20 A He replied that he was going to take</p> <p>21 -- he was going to take care of it and that I</p> <p>22 should not be worried about it.</p> <p>23 Q Did you read through this document?</p> <p>24 A I just peruses through it and was</p> <p>25 aware of what this document was about.</p> <p style="text-align: right;">28</p>

<p>1 M. KIM</p> <p>2 Q What was your understanding of what</p> <p>3 this document was about?</p> <p>4 A I thought that this was relating to</p> <p>5 some overtime issues, overtime payment issues.</p> <p>6 Q Did you review this, what you thought</p> <p>7 was this document again after you received it</p> <p>8 in the mail or was that the only time that you</p> <p>9 reviewed it?</p> <p>10 A When I called Mr. Sung, he told me</p> <p>11 that he would be taking care of it, so I was</p> <p>12 not concerned about this document, so when I</p> <p>13 got it, got similar to it in the mail again, I</p> <p>14 did not even bother to look at them.</p> <p>15 Q Did Mr. Sung ask you for your</p> <p>16 assistance in helping to collect the</p> <p>17 information to respond to Plaintiff's request?</p> <p>18 A I say yes, because as I mentioned, I</p> <p>19 had signatures from the employees when they</p> <p>20 were paid and I just got those things for the</p> <p>21 owner, Mr. Sung.</p> <p>22 Q So the documents that you collected</p> <p>23 were the documents that the employees had</p> <p>24 signed; is that right?</p> <p>25 A Yes, because Mr. Sung said he needs</p> <p style="text-align: right;">29</p>	<p>1 M. KIM</p> <p>2 found for him two categories of documents,</p> <p>3 number 1, the notice for newly hired employees,</p> <p>4 and number 2, the document that employees</p> <p>5 signed?</p> <p>6 A So those were the two things that Mr.</p> <p>7 Sung asked me for, which I provided, and later</p> <p>8 time he asked me to look further for any</p> <p>9 additional information or evidence on any</p> <p>10 employees and I looked for them.</p> <p>11 Q Did you find anything?</p> <p>12 A Records of paid sick days.</p> <p>13 Q Anything else?</p> <p>14 A He also asked for file, computer file</p> <p>15 which I had been preparing for him, it has</p> <p>16 records of the weekly expenditures.</p> <p>17 Q Could you describe to me the document</p> <p>18 a little bit more regarding the weekly</p> <p>19 expenditures, what is that document?</p> <p>20 A Again, that form was set up even</p> <p>21 prior to my joining the store.</p> <p>22 Q Who set it up?</p> <p>23 A That I do not know. But it's very</p> <p>24 likely the boss, Mr. Sung.</p> <p>25 Q Can you describe what that document</p> <p style="text-align: right;">31</p>
<p>1 M. KIM</p> <p>2 it.</p> <p>3 Q Did he ask you for any other types of</p> <p>4 documents?</p> <p>5 A Yes, I had it in my possession and I</p> <p>6 handed that over to him.</p> <p>7 Q I guess my question was, did he ask</p> <p>8 you for any other types of documents?</p> <p>9 A He did ask if I had any additional</p> <p>10 documents or evidence.</p> <p>11 Q What types of documents did he ask</p> <p>12 you to look for?</p> <p>13 A Initially he asked me to find the</p> <p>14 form that's filled out by -- filled out when</p> <p>15 employees are newly hired which contains hourly</p> <p>16 rate and overtime and then some preliminary</p> <p>17 information about the new employee.</p> <p>18 Q So he asked you to look for those</p> <p>19 documents; right?</p> <p>20 A Yes.</p> <p>21 Q Did he ask you to look for any other</p> <p>22 types of documents?</p> <p>23 A I really can't think of anything else</p> <p>24 he asked for.</p> <p>25 Q Is it correct then that you only</p> <p style="text-align: right;">30</p>	<p>1 M. KIM</p> <p>2 is?</p> <p>3 A It records work hours, hourly pay,</p> <p>4 how many hours each given employee worked a day</p> <p>5 and their hourly rate.</p> <p>6 Q Anything else?</p> <p>7 A No.</p> <p>8 Q Did Mr. Sung ever show you the</p> <p>9 specific requests that plaintiffs made for</p> <p>10 documents?</p> <p>11 THE INTERPRETER: I'm sorry.</p> <p>12 MS. BARBOSA: Would you like me to</p> <p>13 rephrase it?</p> <p>14 THE INTERPRETER: Yes.</p> <p>15 Q Did Mr. Sung ever show you</p> <p>16 specifically what plaintiffs were requesting</p> <p>17 from 50 Food Corp., what types of documents</p> <p>18 they were requesting?</p> <p>19 A No, no.</p> <p>20 Q Would you say Mr. Sung is fairly</p> <p>21 knowledge of what documents 50 Food Corp has</p> <p>22 regarding employees' compensation and</p> <p>23 employees' hours?</p> <p>24 A In reality I think that I'm more</p> <p>25 hands on in that field than he is.</p> <p style="text-align: right;">32</p>



<p>1 M. KIM</p> <p>2 Q I appreciate your sharing that with</p> <p>3 me, but that doesn't really respond to my</p> <p>4 question. My question is, do you think Mr.</p> <p>5 Sung is pretty knowledgeable of what documents</p> <p>6 do exist at 50 Food Corp including, for</p> <p>7 example, this document that you described</p> <p>8 earlier about where employees sign, the sick</p> <p>9 leave documents you described and this computer</p> <p>10 file?</p> <p>11 A Yeah, I believe he has good knowledge</p> <p>12 of them.</p> <p>13 MS. BARBOSA: Very good. Thank you.</p> <p>14 Can you mark this as Plaintiff's Exhibit</p> <p>15 3.</p> <p>16 (Whereupon, the Defendant's</p> <p>17 Responses to Plaintiff's Request For</p> <p>18 Production of Documents was marked as</p> <p>19 Plaintiff's Exhibit 3 for Identification,</p> <p>20 this date by the Reporter.)</p> <p>21 Q Take a moment to review this</p> <p>22 document.</p> <p>23 (Witness peruses document.)</p> <p>24 A I never saw it before.</p> <p>25 Q Plaintiff's Exhibit number 3 is</p> <p style="text-align: right;">33</p>	<p>1 M. KIM</p> <p>2 (Witness peruses document.)</p> <p>3 A I haven't seen it before.</p> <p>4 Q This is the document of questions</p> <p>5 that plaintiffs submitted to defendants 50 Food</p> <p>6 Corp., and Andrew Sung. If you turn to the</p> <p>7 following page, what is marked as page 2 on the</p> <p>8 bottom of Answers to Interrogatories, they also</p> <p>9 include the questions presented by plaintiffs.</p> <p>10 I don't know if you want to?</p> <p>11 THE INTERPRETER: Yeah. Yes.</p> <p>12 Q So some of the questions involve the</p> <p>13 names and addresses of people who might have</p> <p>14 information related to this lawsuit.</p> <p>15 At any time did Mr. Sung or anyone</p> <p>16 else ask you for information responsive to this</p> <p>17 request?</p> <p>18 A To myself, you mean? To myself did</p> <p>19 he ask?</p> <p>20 Q Yes, did he ask you?</p> <p>21 A Are you asking me if these people</p> <p>22 listed below me are also aware of the</p> <p>23 plaintiff's request?</p> <p>24 Q No. My question is, did anyone ever</p> <p>25 call you or speak to you about providing</p> <p style="text-align: right;">35</p>
<p>1 M. KIM</p> <p>2 Defendant's Responses to Plaintiff's Request</p> <p>3 For Production of Documents. If you turn to</p> <p>4 the fourth page, please?</p> <p>5 THE INTERPRETER: The one that says</p> <p>6 4?</p> <p>7 MS. BARBOSA: It's actually the next</p> <p>8 one that says number 1, sorry.</p> <p>9 THE INTERPRETER: That's okay.</p> <p>10 Number 1 or number 2?</p> <p>11 MS. BARBOSA: Number 1. Just this</p> <p>12 is page 1, 2, 3, 4.</p> <p>13 THE INTERPRETER: This is numbered</p> <p>14 very incorrectly.</p> <p>15 MS. BARBOSA: Sorry, it's double</p> <p>16 sided.</p> <p>17 So we should all be looking at the</p> <p>18 document, the page with a caption,</p> <p>19 Defendant's Amended Response to</p> <p>20 Plaintiff's First Set of Interrogatories.</p> <p>21 THE INTERPRETER: Yes. Which is</p> <p>22 also page 1, thank you.</p> <p>23 MS. BARBOSA: That's correct.</p> <p>24 Q Have you ever seen this document</p> <p>25 before?</p> <p style="text-align: right;">34</p>	<p>1 M. KIM</p> <p>2 information responsive to this request? The</p> <p>3 request being who are people who might have</p> <p>4 information related to this lawsuit?</p> <p>5 THE INTERPRETER: Can you just to</p> <p>6 clarify, what is your ultimate question</p> <p>7 again?</p> <p>8 MS. BARBOSA: Is that what he asked?</p> <p>9 THE INTERPRETER: He said yes. I</p> <p>10 have to explain to him the nature of this</p> <p>11 list pursuant to the Plaintiff's request.</p> <p>12 So what is your bottom -- the question</p> <p>13 which you said before?</p> <p>14 Q So my question is, did anyone --</p> <p>15 forget about this, just listen to my question.</p> <p>16 My question is, did anyone ever call you or</p> <p>17 speak with you and ask you for information to</p> <p>18 respond to the request, the request being what</p> <p>19 people might have information about this</p> <p>20 litigation?</p> <p>21 THE INTERPRETER: He says he's</p> <p>22 confused. I don't know why.</p> <p>23 Q Did anyone ever call you, did Mr.</p> <p>24 Sung or anyone call you and say, plaintiffs</p> <p>25 have made requests for information that we have</p> <p style="text-align: right;">36</p>

<p>1 M. KIM</p> <p>2 a responsibility to respond to, here are some</p> <p>3 of the questions, do you know these answers?</p> <p>4 A He never did.</p> <p>5 Q Okay. Okay. Do you have any</p> <p>6 knowledge of what type of corporation 50 Food</p> <p>7 Corp is?</p> <p>8 A I do not know.</p> <p>9 Q Are you aware that 50 Food Corp is</p> <p>10 essentially Silo Café?</p> <p>11 THE INTERPRETER: Silo Café?</p> <p>12 MS. BARBOSA: That's right.</p> <p>13 A The names are not relevant me. I</p> <p>14 just know that I'm working at Silo Café, and I</p> <p>15 don't know anything other than that.</p> <p>16 Q Have you ever heard of the term 50</p> <p>17 Food Corp before?</p> <p>18 A I have. I knew that the corporation</p> <p>19 name because I see mail with that name.</p> <p>20 Q Okay. Do you have any knowledge of</p> <p>21 when Silo Café at 803 Third Avenue was open?</p> <p>22 A I believe, I believe it in August</p> <p>23 2008.</p> <p>24 Q Did I get the address correct, I</p> <p>25 think I said 803 Third Avenue, but is it 805</p> <p style="text-align: right;">37</p>	<p>1 M. KIM</p> <p>2 correct, but that was my understanding.</p> <p>3 Q Are you aware of any business</p> <p>4 partners to Mr. Sung who might also be</p> <p>5 connected to 50 Food Corp.?</p> <p>6 A I do not know about that.</p> <p>7 Q Do you know whether the company owns</p> <p>8 or rents the property located at 805 Third</p> <p>9 Avenue?</p> <p>10 A I am aware that it's a rented</p> <p>11 facility.</p> <p>12 Q Have you ever seen the lease before?</p> <p>13 A No.</p> <p>14 Q Do you know it's a rental property</p> <p>15 because you're involved in paying the rent?</p> <p>16 A Because I was given the monthly, the</p> <p>17 rent check from the owner, Mr. Sung.</p> <p>18 Q So Mr. Sung gives you the rent check</p> <p>19 to give to the landlord of the property?</p> <p>20 A Yes, I would deliver that to the</p> <p>21 landlord.</p> <p>22 Q You do that on a monthly basis?</p> <p>23 A Yes.</p> <p>24 Q Have you always done that since you</p> <p>25 began at Silo Café?</p> <p style="text-align: right;">39</p>
<p>1 M. KIM</p> <p>2 Third Avenue?</p> <p>3 A 805.</p> <p>4 Q So you said you believe it was opened</p> <p>5 in 2008?</p> <p>6 A Yes.</p> <p>7 Q When did you say you think it was</p> <p>8 opened?</p> <p>9 A August.</p> <p>10 Q I recall you saying earlier that you</p> <p>11 began working at Silo Café in October of 2008;</p> <p>12 is that right?</p> <p>13 A Yes. That is correct, and as I said,</p> <p>14 there was a manager prior to myself.</p> <p>15 Q So if there was a prior manager at</p> <p>16 Silo Café, that person was really only working</p> <p>17 for a few months before you started; is that</p> <p>18 correct?</p> <p>19 A I believe so.</p> <p>20 Q Are you aware of who the corporate</p> <p>21 officers might be for 50 Food Corp.?</p> <p>22 A I know nothing about that.</p> <p>23 Q Do you understand Mr. Sung to be the</p> <p>24 only owner of 50 Food Corp or Silo Café?</p> <p>25 A I'm not sure that I'm entirely</p> <p style="text-align: right;">38</p>	<p>1 M. KIM</p> <p>2 A Yes.</p> <p>3 Q Do you know who the landlord is?</p> <p>4 A I do not know because I would just</p> <p>5 bring it to the building and hand it over to</p> <p>6 the security and in turn that security would</p> <p>7 bring it to the landlord.</p> <p>8 Q And the check, so Mr. Sung gives you</p> <p>9 a check on a monthly basis, is that a Silo Café</p> <p>10 check or a check, a personal check from Mr.</p> <p>11 Sung?</p> <p>12 A In fact I saw it, it had 50 Food Corp</p> <p>13 name on the check.</p> <p>14 Q Okay, thank you. Is it correct that</p> <p>15 the café is only open Monday through Friday?</p> <p>16 A Yes.</p> <p>17 Q What are the hours of the café?</p> <p>18 A Nowadays it's operating from 7:00 AM</p> <p>19 to 3:30 PM. In fact the actual business ends</p> <p>20 at 3:00 PM.</p> <p>21 Q I guess my question, what I'm asking</p> <p>22 right now is not employees' hours, I am asking</p> <p>23 when the business is open, what are the hours</p> <p>24 of the business? What time is the café open in</p> <p>25 the morning?</p> <p style="text-align: right;">40</p>

<p>1 M. KIM</p> <p>2 A You're talking about business hours?</p> <p>3 Q Exactly.</p> <p>4 A 7:00 AM to 3:30 PM.</p> <p>5 Q Is the café typically closed on</p> <p>6 holidays?</p> <p>7 A Yes.</p> <p>8 Q Could you tell me what holidays the</p> <p>9 café closes for?</p> <p>10 A Memorial Day, 4th of July, July 4,</p> <p>11 Christmas, Thanksgiving, because there are no</p> <p>12 customers during those holidays.</p> <p>13 Q Any other holidays besides Memorial</p> <p>14 Day, 4th of July, Christmas and Thanksgiving?</p> <p>15 A New Years. Probably a few more which</p> <p>16 I can't really remember offhand.</p> <p>17 Q Who determines what days the business</p> <p>18 closes?</p> <p>19 A The owner, Mr. Sung.</p> <p>20 Q Right now, how many employees does 50</p> <p>21 Food Corp have?</p> <p>22 A Thirteen or fourteen, between</p> <p>23 thirteen and fourteen.</p> <p>24 Q Could you identify the different jobs</p> <p>25 that people currently do at 50 Food Corp.?</p> <p style="text-align: right;">41</p>	<p>1 M. KIM</p> <p>2 hired them?</p> <p>3 A I did. Yeah, Felix and Delfino were</p> <p>4 not hired by me personally because they had</p> <p>5 already been there prior to my starting my</p> <p>6 employment there.</p> <p>7 Q So you're referring to Delfino,</p> <p>8 Plaintiff, Delfino Lopez and Plaintiff, Felix</p> <p>9 Galindo?</p> <p>10 A Yes.</p> <p>11 Q Did you have to alert Mr. Sung that</p> <p>12 you were hiring these employees?</p> <p>13 A My normal practice that I do inform</p> <p>14 Mr. Sung about new hires, but since there is a</p> <p>15 ay too frequent turnaround, I would</p> <p>16 inadvertently forget to inform Mr. Sung each</p> <p>17 time I have new hire.</p> <p>18 Q Let me make sure I understand.</p> <p>19 Typically it's a part of your practice to</p> <p>20 inform him, but because there's a lot of</p> <p>21 turnover and you may need to hire a lot, you</p> <p>22 may forget sometimes; is that correct?</p> <p>23 A Yes.</p> <p>24 Q Could you hire as many employees as</p> <p>25 you see fit?</p> <p style="text-align: right;">43</p>
<p>1 M. KIM</p> <p>2 A There's a cashier, someone at deli</p> <p>3 section, employees working in the kitchen and a</p> <p>4 dishwasher. That's it.</p> <p>5 Q How many people work in the kitchen?</p> <p>6 A Three.</p> <p>7 Q How many people work at the deli?</p> <p>8 A Four. But one of them would work in</p> <p>9 the kitchen and then at lunchtime then he would</p> <p>10 work in the floor to help out.</p> <p>11 Q I count seven people so far. Four in</p> <p>12 the deli section, three in the kitchen. How</p> <p>13 many people worked for the cashier?</p> <p>14 A Three. And one work as a floor man.</p> <p>15 One person.</p> <p>16 Q Was does the floor man do?</p> <p>17 A He will restock sodas, make</p> <p>18 additional deliveries.</p> <p>19 Q So there's one floor man; is that</p> <p>20 right?</p> <p>21 A Yes.</p> <p>22 Q And what about the dishwasher, is it</p> <p>23 just one dishwasher?</p> <p>24 A Yes, one person for that.</p> <p>25 Q For these current employees, who</p> <p style="text-align: right;">42</p>	<p>1 M. KIM</p> <p>2 A I say yes, especially for nowadays.</p> <p>3 Q Would you have the ability to</p> <p>4 determine that the deli needs more employees</p> <p>5 than what you already have?</p> <p>6 A In cases like that, I would need to</p> <p>7 talk to the owner, Mr. Sung, first.</p> <p>8 Q You can replace employees, but you</p> <p>9 couldn't create a new position; is that right?</p> <p>10 A What I'm saying is I could, but I'd</p> <p>11 rather ask.</p> <p>12 Q You could what?</p> <p>13 THE INTERPRETER: About the new</p> <p>14 hire.</p> <p>15 A Yes.</p> <p>16 Q Do all of these employees work the</p> <p>17 same hours?</p> <p>18 A They're different. For some --</p> <p>19 there's some, they report about 30 minutes</p> <p>20 earlier than the others. In case of</p> <p>21 dishwasher, he is the one to leave the last,</p> <p>22 because he has to wrap up by cleaning</p> <p>23 everything.</p> <p>24 Q And who are the employees that</p> <p>25 usually come 30 minutes earlier?</p> <p style="text-align: right;">44</p>

<p>1 M. KIM</p> <p>2 A Those who has to make breakfast would</p> <p>3 come 30 minutes earlier than others.</p> <p>4 Q What time do those individuals need</p> <p>5 to show up?</p> <p>6 A The first arrival would be at 6:30</p> <p>7 AM.</p> <p>8 Q And the folks who arrive at 6:30 AM</p> <p>9 are nine individuals who make breakfast; right?</p> <p>10 A Yes, as well as those working the</p> <p>11 kitchen.</p> <p>12 Q So would that be kitchen and deli</p> <p>13 employees as you described them earlier?</p> <p>14 A Yes.</p> <p>15 Q And everyone else arrives at 7:00 AM?</p> <p>16 A Yes.</p> <p>17 Q What time do the employees leave for</p> <p>18 the day?</p> <p>19 A Some leave at 3:00 PM, and some leave</p> <p>20 at 3:30 PM or 4:00 PM or 4:30 PM.</p> <p>21 Q Who leaves at three?</p> <p>22 A The ones that arrive at 6:30 AM.</p> <p>23 Q So all the deli and kitchen guys work</p> <p>24 from 6:30 to 3; is that right?</p> <p>25 A Yes, but there were some who worked</p> <p style="text-align: right;">45</p>	<p>1 M. KIM</p> <p>2 A There was some changes.</p> <p>3 Q Tell me about those changes?</p> <p>4 A Okay, first of all, due to slow</p> <p>5 business, we had change to eight hours, eight</p> <p>6 hours daily.</p> <p>7 Q When was that?</p> <p>8 A I believe 2015.</p> <p>9 Q Do you recall more or less when in</p> <p>10 2015?</p> <p>11 A January.</p> <p>12 Q Prior to January 2015, how many hours</p> <p>13 a day did workers work?</p> <p>14 A Nine and a half hours.</p> <p>15 Q How did the business make the</p> <p>16 decision to cut the daily hours from nine and a</p> <p>17 half hours to eight hours?</p> <p>18 A Myself and Mr. Sung discussed it.</p> <p>19 Q Who made the ultimate decision?</p> <p>20 A Mr. Sung.</p> <p>21 Q Right now employees continue to work</p> <p>22 eight hours daily?</p> <p>23 A Yes. Exception of one person who's</p> <p>24 working one additional hour daily.</p> <p>25 Q Who is that person?</p> <p style="text-align: right;">47</p>
<p>1 M. KIM</p> <p>2 from 7:00 to 3:30 as well.</p> <p>3 Q Who decides these schedules?</p> <p>4 A There are times I decide the work</p> <p>5 hours and there are times when the employees</p> <p>6 make request for that, their own request for</p> <p>7 that to me.</p> <p>8 Q So you're saying the employees have a</p> <p>9 say in what their schedules are?</p> <p>10 A My answer is yes, it's for those who</p> <p>11 have second job.</p> <p>12 Q Maybe I should have confirmed this</p> <p>13 earlier, but do all employees work Monday</p> <p>14 through Friday?</p> <p>15 A Well, that is correct, Monday through</p> <p>16 Friday, except for cashiers who are now</p> <p>17 currently working Monday through Friday due to</p> <p>18 slow business.</p> <p>19 Q So all the employees with the</p> <p>20 exception of cashiers work Monday through</p> <p>21 Friday?</p> <p>22 A Yes.</p> <p>23 Q Have these work schedules, the days</p> <p>24 and hours that the employees work, remained the</p> <p>25 same throughout your employment?</p> <p style="text-align: right;">46</p>	<p>1 M. KIM</p> <p>2 A The floor man.</p> <p>3 Q Who is the floor man?</p> <p>4 A Name?</p> <p>5 Q Yes.</p> <p>6 A Sanchez.</p> <p>7 Q Is that his last name?</p> <p>8 A Jovanni Sanchez.</p> <p>9 Q Can you again explain to me what a</p> <p>10 floor man does?</p> <p>11 A I was even willing to show up as</p> <p>12 early as 6:00 in the morning to set up the</p> <p>13 breakfast. Likewise I was asking the floor man</p> <p>14 to stay one additional hour to manage and clean</p> <p>15 up and prepare the store for close.</p> <p>16 Q How does Silo Café keep track of</p> <p>17 employee hours?</p> <p>18 A I took that responsibility upon</p> <p>19 myself.</p> <p>20 Q Prior to when you started, do you</p> <p>21 know what system was in place at Silo Café?</p> <p>22 A Prior to my arrival they were using</p> <p>23 time cards.</p> <p>24 Q When did the business stop using time</p> <p>25 cards?</p> <p style="text-align: right;">48</p>

<p>1 M. KIM</p> <p>2 A I was answering about using time</p> <p>3 cards about my prior employment.</p> <p>4 Q My question, we are talking about 50</p> <p>5 Food Corp., we are talking Silo Café.</p> <p>6 A No, this business did not use time</p> <p>7 cards.</p> <p>8 Q Okay, thank you. My understanding is</p> <p>9 that Silo Café was in operation for a few</p> <p>10 months, only a few months before you started;</p> <p>11 is that right?</p> <p>12 A Yes.</p> <p>13 Q Do you know what system was in place</p> <p>14 to track employees' hours during that period,</p> <p>15 before you started?</p> <p>16 A I have no idea. Maybe they were</p> <p>17 using a manual during that time. Maybe there</p> <p>18 was a manager who could answer that then.</p> <p>19 Q When you first started and Mr. Sung</p> <p>20 was training you, I believe you said for the</p> <p>21 first two months; is that right?</p> <p>22 A Yes.</p> <p>23 Q What, if anything, did Mr. Sung tell</p> <p>24 you to do to track the employee hours?</p> <p>25 A As I mentioned there were forms he</p> <p style="text-align: right;">49</p>	<p>1 M. KIM</p> <p>2 ten minutes, we would not count them as a</p> <p>3 lateness. By doing so, we were able to keep</p> <p>4 consistent start and ending time.</p> <p>5 MS. BARBOSA: Thank you for</p> <p>6 explaining that.</p> <p>7 Q Was it Mr. Sung's decision to have a</p> <p>8 consistent start and end time?</p> <p>9 A Yes.</p> <p>10 Q And my understanding, from your</p> <p>11 testimony, is that it was also Mr. Sung's</p> <p>12 decision to excuse minor lateness; is that</p> <p>13 right?</p> <p>14 A Yes.</p> <p>15 THE INTERPRETER: I guess it's not</p> <p>16 relevant, he just withdrew himself.</p> <p>17 Q So the answer to my previous question</p> <p>18 was that, I'm sorry, I may not have heard it,</p> <p>19 so my understanding is that it was Mr. Sung's</p> <p>20 decision to excuse minor lateness; is that</p> <p>21 right?</p> <p>22 A Correct.</p> <p>23 Q So you described that there is the</p> <p>24 same start time and same end time, was there a</p> <p>25 fixed schedule for all employees?</p> <p style="text-align: right;">51</p>
<p>1 M. KIM</p> <p>2 used for that. There were incidents where we</p> <p>3 had employees late, five, ten minutes, he said</p> <p>4 just excuse those situations. So here is my</p> <p>5 chance to explain why we maintain the same</p> <p>6 start time and same ending time every day.</p> <p>7 Because Mr. Sung wanted -- opted to excuse</p> <p>8 minor latenesses, we always had the same start</p> <p>9 time, who are on the same shifts consistently,</p> <p>10 daily, and three to four PM was normally for</p> <p>11 closing, preparation time, where we need to</p> <p>12 clean up, so based on what each employee's</p> <p>13 shift was, we had always maintained same start</p> <p>14 and same departure time.</p> <p>15 MS. BARBOSA: I'm just going to ask</p> <p>16 the court reporter to read that back.</p> <p>17 (Whereupon, the requested portion of</p> <p>18 the record was read back by the</p> <p>19 Reporter.)</p> <p>20 Q So it was Mr. Sung's decision to have</p> <p>21 everyone have the same start time and end time</p> <p>22 each day?</p> <p>23 A So if there was the lateness for 30</p> <p>24 minutes or more, then we will make the</p> <p>25 deductions, but if it was minor lateness, five,</p> <p style="text-align: right;">50</p>	<p>1 M. KIM</p> <p>2 A Yes.</p> <p>3 Q So there was a fixed schedule, are</p> <p>4 you telling me that there was no system in</p> <p>5 place to mark each day when employees came in</p> <p>6 and when employees left for the day?</p> <p>7 A I believe there may have been a time</p> <p>8 when we're using that particular system you</p> <p>9 mentioned, but we did not feel the need to use</p> <p>10 that, because as I had mentioned before, you</p> <p>11 know, the employees were always leaving at the</p> <p>12 time they were expected to leave although some</p> <p>13 of them were late, which we excused them for as</p> <p>14 long as it's not over 30 minutes.</p> <p>15 Q But you think that maybe in the past</p> <p>16 there was a document where you would track when</p> <p>17 people started and people ended on any given</p> <p>18 day?</p> <p>19 A Are you saying did we use a system</p> <p>20 instead of what we had been keeping in practice</p> <p>21 currently?</p> <p>22 Q That's right.</p> <p>23 A Initially when I became employed at</p> <p>24 the business, I didn't have such practice, but</p> <p>25 it was later at Mr. Sung's request, I started</p> <p style="text-align: right;">52</p>



<p>1 M. KIM</p> <p>2 recording the arrival and departure time.</p> <p>3 Q So Mr. Sung instructed you to record</p> <p>4 the start and end times of each employee?</p> <p>5 A Yes.</p> <p>6 Q Do you recall when he instructed you</p> <p>7 to do this?</p> <p>8 A It's hard to recall when that was.</p> <p>9 Q Was it a year ago? Could it have</p> <p>10 been more than three years ago?</p> <p>11 A Way before more than a year ago. I</p> <p>12 think that it must have been sometime in the</p> <p>13 year 2009.</p> <p>14 Q Okay. So when Mr. Sung instructed</p> <p>15 you more or less in the year of 2009 to begin</p> <p>16 recording employee's start and end time, did</p> <p>17 you do that, were you recording their start and</p> <p>18 end time?</p> <p>19 A Yeah, my answer is yes, initially,</p> <p>20 it's yes, but at that time I began having</p> <p>21 another, additional responsibility, so I more</p> <p>22 or less maintain the same practice as I had</p> <p>23 mentioned before, for example, if somebody who</p> <p>24 was supposed to arrive at 6:30 arrives at 6:35</p> <p>25 or a little later, I would still write 6:30.</p> <p style="text-align: right;">53</p>	<p>1 M. KIM</p> <p>2 Q Do you still have handwritten</p> <p>3 attendance records?</p> <p>4 A Probably some are likely to have been</p> <p>5 missing because especially for those that are</p> <p>6 just very old.</p> <p>7 Q But you think that perhaps you still</p> <p>8 have some of them?</p> <p>9 A I think it's quite probably I do</p> <p>10 have.</p> <p>11 Q Did you ever look for these documents</p> <p>12 to give to Mr. Sung when you were -- when he</p> <p>13 asked for documents related to this lawsuit?</p> <p>14 A He did.</p> <p>15 Q You did?</p> <p>16 A Yeah, he hand over to him too.</p> <p>17 MS. BARBOSA: Okay. I don't know if</p> <p>18 we received those documents. Maybe we</p> <p>19 could discuss that later and see if we</p> <p>20 can find it.</p> <p>21 MR. VARACALLI: Well, I think if you</p> <p>22 ask more clarifying questions about what</p> <p>23 he's referring to, it is possible that he</p> <p>24 is referring to the document that he had</p> <p>25 mentioned earlier in the deposition.</p> <p style="text-align: right;">55</p>
<p>1 M. KIM</p> <p>2 Q So it sounds like you did start</p> <p>3 keeping some document where you recorded the</p> <p>4 start and end times of employees. Can you</p> <p>5 describe to me what that document was?</p> <p>6 A It was something that I had prepared</p> <p>7 myself, and I called it the attendance record.</p> <p>8 Q Was it a handwritten document?</p> <p>9 A I started as my handwritten document.</p> <p>10 Q And then what happened?</p> <p>11 A Subsequently, using the very same</p> <p>12 form, I would make, input, computer input</p> <p>13 instead of my own handwriting.</p> <p>14 THE INTERPRETER: Can we get a</p> <p>15 little break?</p> <p>16 MS. BARBOSA: Sure. Can I just</p> <p>17 finish this line of questioning?</p> <p>18 THE INTERPRETER: Okay.</p> <p>19 Q For how long was it a handwritten</p> <p>20 document?</p> <p>21 A I think that a year or up to two</p> <p>22 years approximately.</p> <p>23 Q And then how long did you input</p> <p>24 information in the computer?</p> <p>25 A Up until now.</p> <p style="text-align: right;">54</p>	<p>1 M. KIM</p> <p>2 MS. BARBOSA: All right. Do you</p> <p>3 want to take a break now?</p> <p>4 THE INTERPRETER: Yes.</p> <p>5 MS. BARBOSA: All right. We will</p> <p>6 take a five or ten minute break.</p> <p>7 (Whereupon, a short recess was</p> <p>8 taken, time noted: 12:23-12:30 PM.)</p> <p>9 Q Before we stopped for a break, you</p> <p>10 were describing a document that you described</p> <p>11 as an attendance record?</p> <p>12 A Yes.</p> <p>13 Q I believe you stated that you began</p> <p>14 creating this document in 2009 as a handwritten</p> <p>15 document; is that right?</p> <p>16 A I believe that is the case.</p> <p>17 Q And again, my understanding based on</p> <p>18 your testimony from a few minutes ago, is that</p> <p>19 this attendance record included the start time</p> <p>20 and end time for each employee; is that right?</p> <p>21 A Yes.</p> <p>22 Q And you described these documents as</p> <p>23 attendance records, was the title, attendance</p> <p>24 record, ever written on top of these documents</p> <p>25 or did it not have a title?</p> <p style="text-align: right;">56</p>

<p>1 M. KIM</p> <p>2 A I do remember that it was bearing a</p> <p>3 title of the document, but I don't know exactly</p> <p>4 how it was worded, maybe working, I don't</p> <p>5 remember. I also was recorded that it was</p> <p>6 prepared by myself.</p> <p>7 Q When you say it was prepared by</p> <p>8 yourself, do you mean that it was your</p> <p>9 handwriting?</p> <p>10 A Yes.</p> <p>11 Q Was there a table, an electronic</p> <p>12 table that you -- diagram, that you filled in</p> <p>13 the information or was it just your</p> <p>14 handwriting?</p> <p>15 A I had prepared it manually, I just</p> <p>16 drew lines and made handwritten input.</p> <p>17 Q When you say you prepared it</p> <p>18 manually, so everything would be in your</p> <p>19 handwriting?</p> <p>20 A Initially, I might have had the</p> <p>21 employee names from the computer, the printout,</p> <p>22 but about the start and end time, it was</p> <p>23 prepared by hand, my handwriting, because</p> <p>24 sometimes an employee could be late up to 30</p> <p>25 minutes which I would need to record.</p> <p style="text-align: right;">57</p>	<p>1 M. KIM</p> <p>2 MR. VARACALLI: Okay.</p> <p>3 MS. BARBOSA: Okay. We can mark</p> <p>4 this as Plaintiff's Exhibit 4.</p> <p>5 (Whereupon, the above mentioned</p> <p>6 document was marked as Plaintiff's</p> <p>7 Exhibit 4 for identification, this date</p> <p>8 by the Reporter.)</p> <p>9 Q So please review these four pages of</p> <p>10 documents, they are printed front and back.</p> <p>11 (Witness peruses document.)</p> <p>12 Q The first page of Plaintiff's Exhibit</p> <p>13 4 is identified as D001334?</p> <p>14 A Yes.</p> <p>15 Q Do you recognize this first page of</p> <p>16 this packet?</p> <p>17 A Yes.</p> <p>18 Q Is this the document that you were</p> <p>19 describing earlier as attendance record?</p> <p>20 A I said, no, this was actually for Mr.</p> <p>21 Sung's review.</p> <p>22 Q When you say for Mr. Sung's review,</p> <p>23 what do you mean?</p> <p>24 A This was prepared by myself for Mr.</p> <p>25 Sung to show the total expenditures paid to the</p> <p style="text-align: right;">59</p>
<p>1 M. KIM</p> <p>2 Q Again, you stated earlier that you</p> <p>3 submitted these documents to Mr. Sung when he</p> <p>4 was asking for the documents related to this</p> <p>5 litigation; right?</p> <p>6 A I did submit it to him at his</p> <p>7 request.</p> <p>8 MS. BARBOSA: Can we stop? Off the</p> <p>9 record.</p> <p>10 (Whereupon, an off the record</p> <p>11 discussion was held.)</p> <p>12 Q Did you give any documents directly</p> <p>13 to Mr. Varacalli?</p> <p>14 A None, everything I submitted was to</p> <p>15 Mr. Sung only.</p> <p>16 MR. VARACALLI: Can I ask one</p> <p>17 question?</p> <p>18 MS. BARBOSA: Sure.</p> <p>19 MR. VARACALLI: Was the document</p> <p>20 that you're referring to as an attendance</p> <p>21 record, the document that you emailed to</p> <p>22 me after I sat with you at the 50 Food</p> <p>23 Corp location?</p> <p>24 THE WITNESS: That was not the one I</p> <p>25 was referring to as attendance record.</p> <p style="text-align: right;">58</p>	<p>1 M. KIM</p> <p>2 employees, this was necessary because sometimes</p> <p>3 the salary amounts for any given employee would</p> <p>4 vary.</p> <p>5 Q What do you call this document?</p> <p>6 A This is relating to the expenditures</p> <p>7 used for salaries, so that's the best I can</p> <p>8 describe what it is.</p> <p>9 Q Sure, I understand that. Thank you.</p> <p>10 For the purposes of consistency, can we refer</p> <p>11 to this type of document as staff expenditure,</p> <p>12 would that be okay?</p> <p>13 A Yes.</p> <p>14 Q How often would you create this</p> <p>15 document for Mr. Sung's review?</p> <p>16 A This was already stored in the</p> <p>17 computer, so Mr. Sung could have seen it daily</p> <p>18 or weekly, I have no way of knowing.</p> <p>19 Q Did Mr. Sung instruct you to create</p> <p>20 this staff expenditure document?</p> <p>21 A Yes.</p> <p>22 Q So you never actually needed to</p> <p>23 directly personally show it to him, it was in</p> <p>24 the computer which he had access to, that's my</p> <p>25 understanding of your testimony; is that right?</p> <p style="text-align: right;">60</p>

<p>1 M. KIM</p> <p>2 A Correct. So I have no way of knowing</p> <p>3 how often he saw it if at all.</p> <p>4 Q When did Mr. Sung instruct you to</p> <p>5 keep this information?</p> <p>6 A From the very start, when I got</p> <p>7 employed there.</p> <p>8 Q So you should have this staff</p> <p>9 expenditure document for each week since you've</p> <p>10 been employed at the café?</p> <p>11 A Yes.</p> <p>12 Q Would it be correct to say that the</p> <p>13 weekly staff expenditure document remains saved</p> <p>14 in the computer at Silo Café?</p> <p>15 A Yes.</p> <p>16 Q Did you turn over all of the staff</p> <p>17 expenditure documents to either Mr. Varacalli</p> <p>18 or to Mr. Sung?</p> <p>19 A Yes.</p> <p>20 Q Do you think that the documents he</p> <p>21 submitted were for each week since you've been</p> <p>22 employed at Silo Café?</p> <p>23 A I believe it was maintained up until</p> <p>24 — excuse me, I had missed something so I asked</p> <p>25 him. So the answer is yes, but I also want to</p> <p style="text-align: right;">61</p>	<p>1 M. KIM</p> <p>2 Q Can you please turn the page. So</p> <p>3 it's difficult to see the bates stamp on this</p> <p>4 document, but I'm going to say that it is bates</p> <p>5 stamped D000950. This document has the title,</p> <p>6 Payment Report and it looks like it's for Felix</p> <p>7 Galindo; do you recognize this document?</p> <p>8 A Yes.</p> <p>9 Q What is this document?</p> <p>10 A It shows a total hours he worked in</p> <p>11 that given week and his rate and the regular</p> <p>12 earning and then overtime he worked and the</p> <p>13 total 2.5 hours of lunch deduction which was 30</p> <p>14 minutes daily and his total compensation for</p> <p>15 that week.</p> <p>16 Q Is this the document that you were</p> <p>17 describing earlier as the attendance record?</p> <p>18 A This is not the one that I was</p> <p>19 referring to as the attendance record.</p> <p>20 MS. BARBOSA: Unless you can think</p> <p>21 of any other clarifying questions, you</p> <p>22 concede that you don't have the</p> <p>23 attendance record.</p> <p>24 MR. VARACALLI: It would seem.</p> <p>25 Q What is the policy at 50 Food Corp</p> <p style="text-align: right;">63</p>
<p>1 M. KIM</p> <p>2 say that when we changed to a different</p> <p>3 computer in the year 2008 or 2009 or so, a lot</p> <p>4 of the information of this form or document was</p> <p>5 deleted, so I believe the information for 2008</p> <p>6 or 2009 for about a year or so, has been</p> <p>7 deleted entirely and I eventually stopped</p> <p>8 maintaining this record because it didn't seem</p> <p>9 like Mr. Sung was reviewing the document, so</p> <p>10 other than those times when the total amount of</p> <p>11 the expenditure to the employees had changed, I</p> <p>12 did not keep updating the weekly.</p> <p>13 Q When did you stop using this staff</p> <p>14 expenditure document?</p> <p>15 A 2017 maybe.</p> <p>16 Q And so what years are missing because</p> <p>17 they were deleted from the computer?</p> <p>18 A Yeah, it could have been 2008, 2009</p> <p>19 and even 2010.</p> <p>20 Q And again, this staff, what we have</p> <p>21 identified as the staff expenditure document,</p> <p>22 this is not the attendance document that you</p> <p>23 were describing earlier; right?</p> <p>24 A Yeah, that's how I see it, they're</p> <p>25 different documents.</p> <p style="text-align: right;">62</p>	<p>1 M. KIM</p> <p>2 for breaks?</p> <p>3 A That all were given 30 minutes break</p> <p>4 for lunch, initially it was fixed at 15 minutes</p> <p>5 for breakfast, but maybe had not arrived in</p> <p>6 time to take that 15 minute breakfast break, so</p> <p>7 we gave them freedom to take that 15 minute</p> <p>8 break any time they see it fit. Whatever the</p> <p>9 case might be, it was all within the eight</p> <p>10 hours a day work.</p> <p>11 Q So typically employees received both</p> <p>12 the 30 minute break and a 15 minute break, that</p> <p>13 fifteen minute break could have been taken in</p> <p>14 the morning for breakfast or at any other point</p> <p>15 during the workday; is that right?</p> <p>16 A Yeah, we just wanted the employees to</p> <p>17 have freedom of taking break when it's more</p> <p>18 feasible for them, so in reality the employees,</p> <p>19 the work time, work hours was 7 hours and 45</p> <p>20 minutes for their eight hour shift.</p> <p>21 Q Who determines when the employees</p> <p>22 take the break?</p> <p>23 A I don't know what happened prior to</p> <p>24 me, but I must have been the one who made that</p> <p>25 decision.</p> <p style="text-align: right;">64</p>

<p>1 M. KIM</p> <p>2 Q Since you have started at Silo Café,</p> <p>3 you have been the only one to make the decision</p> <p>4 as to when employees take their breaks; is that</p> <p>5 what you're saying?</p> <p>6 A Yes, I say I was the one to make that</p> <p>7 decision.</p> <p>8 Q And are the times and the amount of</p> <p>9 time that employees took for breaks, is that</p> <p>10 reflected in the attendance records that you</p> <p>11 described earlier?</p> <p>12 A It was not reflected in that</p> <p>13 attendance record that I had mentioned earlier.</p> <p>14 Q So the attendance record that you</p> <p>15 discussed earlier only included the start time</p> <p>16 and the end time and did not include anything</p> <p>17 involving breaks?</p> <p>18 A That is correct.</p> <p>19 Q What time did employees usually take</p> <p>20 the 30 minute break?</p> <p>21 A Again, depends on the employee, for</p> <p>22 example, those who arrive at 6:30 AM would</p> <p>23 normally take lunch at 2:00 PM and some people</p> <p>24 do not want any breaks, so in those cases they</p> <p>25 would just prefer to leave 30 minutes earlier.</p> <p style="text-align: right;">65</p>	<p>1 M. KIM</p> <p>2 employees?</p> <p>3 A Yes, there were something like that.</p> <p>4 Q Can you describe to me what those</p> <p>5 are?</p> <p>6 A Okay. It makes references to those</p> <p>7 who are habitually late to work or have</p> <p>8 problems or arguments with customers or in case</p> <p>9 of conflict or controversy between the</p> <p>10 employees. Yeah, it does set forth that they</p> <p>11 can be punished by being fired but in the</p> <p>12 reality we -- it was never -- had never gone</p> <p>13 that far where we had to fire someone for those</p> <p>14 reasons.</p> <p>15 Q These policies that you described,</p> <p>16 are these written employment policies?</p> <p>17 A Yes.</p> <p>18 Q Is this one document that includes</p> <p>19 all of these policies that you described or are</p> <p>20 they separate documents?</p> <p>21 A Just within one document.</p> <p>22 Q Who created this document?</p> <p>23 A I do not know that, because Mr. Sung</p> <p>24 brought it to me.</p> <p>25 Q When did Mr. Sung bring it to you?</p> <p style="text-align: right;">67</p>
<p>1 M. KIM</p> <p>2 Q Would it ever be the case that the</p> <p>3 deli was too busy for someone to take a full 30</p> <p>4 minute break?</p> <p>5 A I would not be surprised, yes, that</p> <p>6 could have been.</p> <p>7 Q How often do you think this would</p> <p>8 happen?</p> <p>9 A Once in a blue moon.</p> <p>10 Q When you say once in a blue moon, do</p> <p>11 you mean -- I think if I could just instruct</p> <p>12 Mr. Kim, I think it would be clearer for the</p> <p>13 record if you continue speaking in Korean.</p> <p>14 Please go ahead and state what you were</p> <p>15 planning on saying.</p> <p>16 A I think that there really was no</p> <p>17 occasion where one couldn't take lunch break</p> <p>18 due to the busyness of the store.</p> <p>19 Q So you would always ensure that</p> <p>20 workers would take 30 minutes?</p> <p>21 A Of course.</p> <p>22 Q Are there any written employment</p> <p>23 policies distributed to employees?</p> <p>24 A Are you referring to a store policy?</p> <p>25 Q I'm referring to policies for the</p> <p style="text-align: right;">66</p>	<p>1 M. KIM</p> <p>2 A I don't remember.</p> <p>3 Q Was it soon after you started at the</p> <p>4 café?</p> <p>5 A I think only a little after I started</p> <p>6 working at the café.</p> <p>7 Q Would you say he gave it to you</p> <p>8 within one year of you starting at the café?</p> <p>9 A I think it was after a year had</p> <p>10 passed by when I got it from Mr. Sung.</p> <p>11 Q Maybe within your second year at the</p> <p>12 café?</p> <p>13 A I don't recall.</p> <p>14 Q What did Mr. Sung tell you to do with</p> <p>15 this printed document that included employment</p> <p>16 policies for the employees?</p> <p>17 A Okay, so when Mr. Sung presented me</p> <p>18 with that document, he said that because of --</p> <p>19 because he was concerned about my very soft</p> <p>20 nature, and that there was a concern that some</p> <p>21 people wanted to try to challenge me or out</p> <p>22 power me by maybe breaking rules, like you</p> <p>23 know, maybe being late or maybe even as bad as</p> <p>24 stealing especially because there were so many</p> <p>25 frequent turnovers, he thought that I may need</p> <p style="text-align: right;">68</p>

<p>1 M. KIM</p> <p>2 to abide by these policies. And Mr. Sung also</p> <p>3 mentioned that just by talking to the employees</p> <p>4 about these rules, or when I try to reprimand</p> <p>5 them, they do not really take me seriously so</p> <p>6 he felt that there was a need to have a</p> <p>7 document set forth like that.</p> <p>8 Q Did he tell you to distribute this</p> <p>9 document to the employees?</p> <p>10 A He did.</p> <p>11 Q And when would you distribute this</p> <p>12 document to employees?</p> <p>13 A I don't recall when I did.</p> <p>14 Q Did you only do it once or did you do</p> <p>15 it various times?</p> <p>16 A I believe several times.</p> <p>17 Q Did you ever give Mr. Sung a copy of</p> <p>18 this document with the employment policies,</p> <p>19 would the other documents responsive to</p> <p>20 plaintiff's request related to this case?</p> <p>21 A I don't recall if I did.</p> <p>22 Q Do you recall Mr. Sung asking you for</p> <p>23 this document?</p> <p>24 A I don't think he did.</p> <p>25 Q Does the café have any posters that</p> <p style="text-align: right;">69</p>	<p>1 M. KIM</p> <p>2 to do that, but I just knew at one point that I</p> <p>3 needed to do that.</p> <p>4 MS. BARBOSA: Mark this as</p> <p>5 Plaintiff's Exhibit 5.</p> <p>6 (Whereupon, the above mentioned</p> <p>7 document was marked as Plaintiff's</p> <p>8 Exhibit 5 for identification, this date</p> <p>9 by the Reporter.)</p> <p>10 Q Plaintiff's Exhibit number 5 has been</p> <p>11 bates stamped D000883. Do you recognize this</p> <p>12 document?</p> <p>13 (Witness peruses document.)</p> <p>14 A I think it's likely that I have seen</p> <p>15 it.</p> <p>16 Q What do you think it is?</p> <p>17 A I think this covers the new year</p> <p>18 period, there were long breaks and Mr. Sung</p> <p>19 wanted to compensate for that long break to the</p> <p>20 employees by giving them hundred dollar bonus.</p> <p>21 Q So Mr. Sung made the decision to give</p> <p>22 Mr. Galindo, in this case, a hundred dollar</p> <p>23 bonus, is that what you're saying?</p> <p>24 A Yes, but if it would have been paid</p> <p>25 to everybody else as well, not just to this</p> <p style="text-align: right;">71</p>
<p>1 M. KIM</p> <p>2 inform the employees of their rights?</p> <p>3 A I don't think that it's there now</p> <p>4 currently. It was really mainly about the</p> <p>5 hourly rate notices and rules for sick days.</p> <p>6 Q You don't recall the café ever having</p> <p>7 a poster alerting employees what the minimum</p> <p>8 wage is?</p> <p>9 A It is the same thing that we've been</p> <p>10 talking about.</p> <p>11 Q What I'm describing is a poster, a</p> <p>12 large piece of paper that would be hung on the</p> <p>13 wall in the café?</p> <p>14 A I can only say that we had the,</p> <p>15 posted on the wall, the hourly rate from the</p> <p>16 national -- the labor board, excuse me.</p> <p>17 Q Did you hang this poster up in the</p> <p>18 café?</p> <p>19 A It's posted in the room where the</p> <p>20 employees change their clothing.</p> <p>21 Q My question is, who put the poster</p> <p>22 up?</p> <p>23 A I did.</p> <p>24 Q Did anyone instruct you to do that?</p> <p>25 A Not necessarily somebody instruct me</p> <p style="text-align: right;">70</p>	<p>1 M. KIM</p> <p>2 person.</p> <p>3 Q Did Mr. Sung often make the decision</p> <p>4 to give bonuses to employees?</p> <p>5 A He did.</p> <p>6 Q This document which has the title,</p> <p>7 Payment Report, when did you start using this</p> <p>8 document entitled, Payment Report?</p> <p>9 A I'm not a hundred percent sure but it</p> <p>10 must have been later, at the end of 2008 or</p> <p>11 early 2009.</p> <p>12 Q Is it correct to say that in this</p> <p>13 particular document, that this is your</p> <p>14 handwriting, you're the person who filled out</p> <p>15 this information?</p> <p>16 A Mine.</p> <p>17 Q Who instructed you to use this</p> <p>18 template, this document, this already printed</p> <p>19 out form of the payment report?</p> <p>20 A Mr. Sung brought it to me for use.</p> <p>21 Q What did Mr. Sung say to you when he</p> <p>22 brought it to you?</p> <p>23 A Yeah, it was very self-explanatory,</p> <p>24 what I needed to enter, input in these forms.</p> <p>25 Q Did he tell you why you needed to do</p> <p style="text-align: right;">72</p>



<p>1 M. KIM</p> <p>2 this?</p> <p>3 A Yeah, you know, it had -- there's the</p> <p>4 recipient's signature which proves the money</p> <p>5 was paid and recognized.</p> <p>6 Q Did he tell you how often you needed</p> <p>7 to fill in this information?</p> <p>8 A Just for one week.</p> <p>9 Q So these were made on a weekly basis,</p> <p>10 is that what you're saying?</p> <p>11 A Yes, weekly.</p> <p>12 Q Do you know if these payment reports</p> <p>13 were used prior to when you became manager?</p> <p>14 A I have no recollection of that.</p> <p>15 Q Is the information in these weekly</p> <p>16 payment reports accurate to the best of your</p> <p>17 knowledge?</p> <p>18 A I believe they are.</p> <p>19 Q In determining the regular hours and</p> <p>20 overtime hours in this document, did you refer</p> <p>21 to any document?</p> <p>22 A I was using the time record that I</p> <p>23 had prepared myself that I had mentioned</p> <p>24 previously.</p> <p>25 Q You're referring to the attendance</p> <p style="text-align: right;">73</p>	<p>1 M. KIM</p> <p>2 Q I believe you testified earlier and</p> <p>3 please correct me if I'm wrong, that the</p> <p>4 attendance record that you created and kept for</p> <p>5 several years only included the start time and</p> <p>6 end time; is that correct?</p> <p>7 A Yes.</p> <p>8 Q So how could that document help you</p> <p>9 in determining how much time was taken for</p> <p>10 break?</p> <p>11 A The way I looked at it is that if the</p> <p>12 attendance record that I kept for myself, that</p> <p>13 it reflects that he had left 30 minutes later</p> <p>14 than his usual shift, I would know that -- I</p> <p>15 would know what to deduct as well as if it</p> <p>16 wasn't, I will still know that he had 30</p> <p>17 minutes lunch break.</p> <p>18 Q How would you know that he still had</p> <p>19 30 minutes lunch break?</p> <p>20 A Then I will challenge you by saying</p> <p>21 that he may not have taken 30 minutes break but</p> <p>22 at the same token he could have taken 45</p> <p>23 minutes break for lunch.</p> <p>24 Q I guess, please correct me if I'm</p> <p>25 wrong, but the point that I am trying to</p> <p style="text-align: right;">75</p>
<p>1 M. KIM</p> <p>2 record that we talked about earlier?</p> <p>3 A Yes.</p> <p>4 Q Well, I'm just going to refer you to</p> <p>5 the column that's titled, Deduction?</p> <p>6 A Yes.</p> <p>7 Q It says, lunch, 1.5, does that mean</p> <p>8 that 1.5 hours were deducted this week for</p> <p>9 lunch break?</p> <p>10 A Yes.</p> <p>11 Q How did you determine that Mr.</p> <p>12 Galindo, during this week, took exactly one and</p> <p>13 a half hours for lunch?</p> <p>14 A First of all, he worked three days</p> <p>15 and I also want to say that either he had taken</p> <p>16 that 30 minutes for his lunch break or he had</p> <p>17 left 30 minutes early so I consider that 30</p> <p>18 minutes of lunchtime.</p> <p>19 Q Were you referring to any specific</p> <p>20 document about the amount of break time that</p> <p>21 Mr. Galindo took or was this just based on your</p> <p>22 knowledge that was in your head?</p> <p>23 A There was supporting document, the</p> <p>24 one that I had mentioned previously, that I</p> <p>25 prepare myself.</p> <p style="text-align: right;">74</p>	<p>1 M. KIM</p> <p>2 confirm is that there is no document that you</p> <p>3 kept that indicated the amount of break that</p> <p>4 somebody took on a daily basis; is that right?</p> <p>5 A No, the answer is no. But -- okay, so</p> <p>6 my argument to prove my point is that while</p> <p>7 there was no separate document to record those</p> <p>8 break status, as I mentioned before, a person</p> <p>9 could start the break at ten and spend up to 15</p> <p>10 minutes or he could spend nearly 30 minutes for</p> <p>11 his break and it was understood, it was</p> <p>12 understood, so likewise that is the way I kept</p> <p>13 it from the attendance record by indicating</p> <p>14 their start and end time.</p> <p>15 Q Okay. I see that the payment reports</p> <p>16 includes a column for regular hours and a</p> <p>17 column for overtime hours; is that right?</p> <p>18 A Yes.</p> <p>19 Q How did you know what hours to input</p> <p>20 in the overtime hours column?</p> <p>21 A Initially, as I mentioned, everybody,</p> <p>22 every employee's start time could be different</p> <p>23 and, as I mentioned, my boss forgave minor</p> <p>24 latenesses as though they reported on time,</p> <p>25 they arrived on time. And our closing time was</p> <p style="text-align: right;">76</p>

<p>1 M. KIM</p> <p>2 either always the same time, if not earlier,</p> <p>3 never later. So as of 3:00 PM, the customers</p> <p>4 stopped coming to the store. That is the</p> <p>5 reason why we use one hour for cleaning up the</p> <p>6 store to prepare for the closure. So for those</p> <p>7 who wanted to leave early would do speed</p> <p>8 cleaning, they would try to move fast. What I</p> <p>9 mean is that because I allowed them to, the</p> <p>10 employees to leave early, they were interested</p> <p>11 in working faster so that they can leave early.</p> <p>12 For those reasons, the overtime can always be</p> <p>13 consistent without any variation.</p> <p>14 Q I'm not sure I understand.</p> <p>15 THE INTERPRETER: Neither do I. I'm</p> <p>16 sorry.</p> <p>17 Q Are you saying that you wanted</p> <p>18 employees to have the same amount of overtime</p> <p>19 hours every week?</p> <p>20 A Yes, that is because the café is</p> <p>21 located inside, in the basement, and had we</p> <p>22 been located outside to be seen by the</p> <p>23 passerby, chances are they're likely to walk in</p> <p>24 even after three. And then we'll just -- we</p> <p>25 will have no choice but to greet the customers</p> <p style="text-align: right;">77</p>	<p>1 M. KIM</p> <p>2 just hire additional help. So instead of</p> <p>3 hiring somebody for -- to work one and a half</p> <p>4 additional hour, we just wanted to give an</p> <p>5 employee an overtime of one and a half hour.</p> <p>6 Q Okay. So in this document, the total</p> <p>7 is \$399.79, so is that the amount, do you think</p> <p>8 that amount is accurate as to the amount that</p> <p>9 Mr. Galindo received in this week in 2013?</p> <p>10 A Yes.</p> <p>11 Q So he was actually given out 79 cents</p> <p>12 in coins; is that right?</p> <p>13 A No, I paid 400. Yeah, Mr. Sung told</p> <p>14 me to pay him \$400 because it's only 21 cents</p> <p>15 shy of \$400.</p> <p>16 Q You recall Mr. Sung telling you on</p> <p>17 this particular week to pay Mr. Galindo \$400 or</p> <p>18 are you just saying that Mr. Sung would</p> <p>19 instruct you to round up for all payments made</p> <p>20 to employees?</p> <p>21 A That applies to all the employees.</p> <p>22 Q When did Mr. Sung instruct you to do</p> <p>23 this?</p> <p>24 A This was even from the initial, when</p> <p>25 I initially, when I started filling these forms</p> <p style="text-align: right;">79</p>
<p>1 M. KIM</p> <p>2 and serve them. But as I mentioned, the store,</p> <p>3 no customers would enter after 3:00 PM which</p> <p>4 means, we cannot give any employees overtime</p> <p>5 even if we wanted to, there was no need for it.</p> <p>6 Q I appreciate that information, but</p> <p>7 I'm not sure if it's really responsive to my</p> <p>8 question. I think this could be a lot easier</p> <p>9 if you could listen to my question and answer</p> <p>10 my question without providing a -- so are you</p> <p>11 telling me that the amount of overtime hours</p> <p>12 that you entered into this document was based</p> <p>13 on the amount of salary that you wanted to make</p> <p>14 sure that each employee earned at the end of</p> <p>15 the week?</p> <p>16 A The extra, that's not the case,</p> <p>17 because as you can see there is the regular</p> <p>18 hours indicated here (indicating).</p> <p>19 Q So in this instance, why was, why do</p> <p>20 you think Felix Galindo only received 24</p> <p>21 regular hours?</p> <p>22 A Because he was working eight hours a</p> <p>23 day. And as I said before, we close our</p> <p>24 business early, for that reason, and just</p> <p>25 because we close early, you know, we couldn't</p> <p style="text-align: right;">78</p>	<p>1 M. KIM</p> <p>2 out. This is really same thing as when Mr.</p> <p>3 Sung practiced about forgiving minor</p> <p>4 latenesses.</p> <p>5 Q So my question is when, when did Mr.</p> <p>6 Sung tell you, do you recall when he said,</p> <p>7 listen, you should really round up when paying</p> <p>8 out employees their weekly salary?</p> <p>9 A That was the case from soon as --</p> <p>10 soon after I began working at that business.</p> <p>11 Q Okay. Got it. So I want to draw</p> <p>12 your attention to the signature line, do you</p> <p>13 recognize that to be Mr. Galindo's signature?</p> <p>14 A Yes, but sometimes his signature</p> <p>15 looks quite different from this one.</p> <p>16 Q Why is that?</p> <p>17 A I have no idea.</p> <p>18 Q When would employees typically sign</p> <p>19 this document?</p> <p>20 A The moment they received the wages.</p> <p>21 Q Who asks for their signature?</p> <p>22 A I do.</p> <p>23 Q Are you the one who also hands over</p> <p>24 their wages?</p> <p>25 A Yes.</p> <p style="text-align: right;">80</p>

<p>1 M. KIM</p> <p>2 Q Is it correct that Mr. Galindo along</p> <p>3 with the other two plaintiffs, Esteban Perez</p> <p>4 and Delfino Lopez, were paid in cash?</p> <p>5 A Yes.</p> <p>6 Q So you paid the cash to them directly</p> <p>7 each week; is that right?</p> <p>8 A Yes.</p> <p>9 Q Could an employee receive their wages</p> <p>10 without signing this document?</p> <p>11 A Yes, there were occasions when</p> <p>12 employees receiving their wage did not sign</p> <p>13 although Mr. Sung did not -- was not aware of</p> <p>14 it. That's because when I'm very busy, I</p> <p>15 forget to present this form when the payment</p> <p>16 was made to a certain employee and I will get</p> <p>17 the signed form at a later time, like the next</p> <p>18 day. Although, Mr. Sung would not permit that.</p> <p>19 According to Mr. Sung, he would -- he was very</p> <p>20 strict about getting an employee's signature</p> <p>21 when they received the wage, but in case of</p> <p>22 certain employee, I know that person for long</p> <p>23 time, and know very well about each other, so I</p> <p>24 would inadvertently permit that.</p> <p>25 Q Did Mr. Sung ever discover that some</p> <p style="text-align: right;">81</p>	<p>1 M. KIM</p> <p>2 expenditure amount, based on any changes, if</p> <p>3 there were any.</p> <p>4 Q Okay. So the first page of this</p> <p>5 document, it looks like it's for the time</p> <p>6 period of March 4 through March 8 of 2013, do</p> <p>7 you agree?</p> <p>8 A Yes.</p> <p>9 Q So the first column includes the</p> <p>10 employee's name; is that right?</p> <p>11 A Yes.</p> <p>12 Q The second column is what their</p> <p>13 position was at that time, the third column</p> <p>14 says, working time, what do you understand that</p> <p>15 column to reflect?</p> <p>16 A I just want to reiterate that this</p> <p>17 form, this particular form, was already being</p> <p>18 used when I first began working for this café.</p> <p>19 Q I understand that, thank you.</p> <p>20 THE INTERPRETER: But the question</p> <p>21 remains.</p> <p>22 Q Can you respond to the question, so</p> <p>23 the question, what does that third column</p> <p>24 represent, the column that's entitled, working</p> <p>25 time?</p> <p style="text-align: right;">83</p>
<p>1 M. KIM</p> <p>2 signature lines were left blank?</p> <p>3 A I say he wouldn't know because even</p> <p>4 myself, would make a mistake like that.</p> <p>5 MS. BARBOSA: Can you mark this as</p> <p>6 Plaintiff's Exhibit 6?</p> <p>7 (Whereupon, the above mentioned</p> <p>8 document was marked as Plaintiff's</p> <p>9 Exhibit 6 for identification, this date</p> <p>10 by the Reporter.)</p> <p>11 Q Please look at what has been</p> <p>12 identified as Plaintiff's Exhibit 6.</p> <p>13 (Witness peruses document.)</p> <p>14 Q I think earlier we decided that we</p> <p>15 would call this type of document which has been</p> <p>16 labeled as D001276 as staff expenditure; is</p> <p>17 that right?</p> <p>18 A Yes.</p> <p>19 Q And my understanding is that Mr. Sung</p> <p>20 instructed you to keep this document and fill</p> <p>21 it out on a weekly basis; is that right?</p> <p>22 A Yes, he did, and up to a certain</p> <p>23 period of time, I maintained it as he</p> <p>24 instructed me. But I don't know when, but at</p> <p>25 one point I would just insert the total amount,</p> <p style="text-align: right;">82</p>	<p>1 M. KIM</p> <p>2 A Their shift hours, work hours.</p> <p>3 Q Okay. And then the fourth column</p> <p>4 when it says, wage, is that the employee's</p> <p>5 hourly rate?</p> <p>6 A The answer is yes, but it's quite</p> <p>7 possible that I did not update it when I needed</p> <p>8 to.</p> <p>9 Q What do you mean?</p> <p>10 A I would -- what I am saying is that I</p> <p>11 was maintaining this and updating as necessary</p> <p>12 so for example, if I was updating the salary</p> <p>13 amount, I could have likely neglected to update</p> <p>14 the wages and the other information.</p> <p>15 Q Is that because when you made changes</p> <p>16 to an employee's salary, you made changes to</p> <p>17 what their weekly salary was?</p> <p>18 A Well, in case of the salary column</p> <p>19 where you see everything is rounded off which</p> <p>20 was based on Mr. Sung's instructions, so for</p> <p>21 example, if there's \$400, it could have been</p> <p>22 say \$399.75 which was rounded to \$400 for the</p> <p>23 easier calculation and I had totaled the total</p> <p>24 expenditure.</p> <p>25 THE INTERPRETER: He says not to</p> <p style="text-align: right;">84</p>

<p>1 M. KIM</p> <p>2 say, but I have to say what he says.</p> <p>3 A In prior occasions, I had rounded off</p> <p>4 the \$400 instead of something like this,</p> <p>5 \$399.79 and Mr. Sung found out about it, and</p> <p>6 you know, he wanted me to not to do that.</p> <p>7 Because I wrote \$400 because I did actually pay</p> <p>8 \$400.</p> <p>9 Q Okay. So you feel confident that the</p> <p>10 salary column is the correct amount of money</p> <p>11 that was paid out to employees on a weekly</p> <p>12 basis?</p> <p>13 A I say I am convinced that those were</p> <p>14 the right amount that was actually paid to each</p> <p>15 given employee, but I think that this form is</p> <p>16 more accurate than any other form and I use</p> <p>17 this form when I update it, even then I could</p> <p>18 have probably neglected to update certain</p> <p>19 numbers in this form. Because I say this is</p> <p>20 very accurate because this is exactly what was</p> <p>21 paid, reflects exactly what was paid to any</p> <p>22 given employee because he signed, the recipient</p> <p>23 signed the receipt of that amount.</p> <p>24 Q Okay. Can you turn to the last page</p> <p>25 in this packet of documents?</p> <p style="text-align: right;">85</p>	<p>1 M. KIM</p> <p>2 Q So your explanation as to why the</p> <p>3 regular rate is 9.36 on the payment report, but</p> <p>4 7.80 on the staff expenditure form is just</p> <p>5 because you rounded up the total salary from</p> <p>6 \$479.70 to \$480.00? Why don't you translate</p> <p>7 that?</p> <p>8 A It may not be easy for you to</p> <p>9 understand the concept here but as I mentioned</p> <p>10 before I was only updating the total amount</p> <p>11 paid to each given employee and when there was</p> <p>12 a change to that, I would update it, often not</p> <p>13 updating hourly wage, that is the reason for</p> <p>14 the difference of the hourly rate in those two</p> <p>15 documents.</p> <p>16 Q Was the salary column more often</p> <p>17 updated because employees were receiving a</p> <p>18 weekly salary?</p> <p>19 A That too, but this document was for</p> <p>20 the purpose of presenting it to the -- to Mr.</p> <p>21 Sung really.</p> <p>22 Q Okay. I guess my question is did you</p> <p>23 often update this column because you understood</p> <p>24 and employees understood that they typically</p> <p>25 received a weekly salary as opposed to an</p> <p style="text-align: right;">87</p>
<p>1 M. KIM</p> <p>2 (Witness peruses document.)</p> <p>3 Q So this document is identified by</p> <p>4 bates stamp D000146. Would you agree that the</p> <p>5 date of this payment report matches the date of</p> <p>6 the staff expenditure form on the first page?</p> <p>7 (Phone rings.)</p> <p>8 MS. BARBOSA: We will take a break</p> <p>9 for a moment.</p> <p>10 (Whereupon, a short recess was</p> <p>11 taken, time noted: 1:38-1:40 PM.)</p> <p>12 MS. BARBOSA: Since we took a break,</p> <p>13 would you mind reading back the question?</p> <p>14 (Whereupon, the requested portion of</p> <p>15 the record was read back by the</p> <p>16 Reporter.)</p> <p>17 A Yes.</p> <p>18 Q And could you explain again why the</p> <p>19 regular rate on this payment report would be</p> <p>20 different from the regular rate for Mr. Perez</p> <p>21 on the staff expenditure sheet?</p> <p>22 A I did my best explaining the reason</p> <p>23 why. That's because I changed the salary</p> <p>24 amount by rounding off but in actuality, it's</p> <p>25 the same thing. The total amount are the same.</p> <p style="text-align: right;">86</p>	<p>1 M. KIM</p> <p>2 hourly rate?</p> <p>3 A I just want to recap again that I've</p> <p>4 been working there ten years or so and I</p> <p>5 already know what each given employee gets as</p> <p>6 their weekly salary. And this document was</p> <p>7 really for Mr. Sung to -- Mr. Sung's review</p> <p>8 only and I wanted to update him as to what each</p> <p>9 employee was getting during certain work</p> <p>10 period.</p> <p>11 Q Thank you for clarifying that. My</p> <p>12 understanding is that although there was a</p> <p>13 column for an hourly rate, that information</p> <p>14 really didn't matter because you understood</p> <p>15 that employees were actually getting a weekly</p> <p>16 salary, is that what you're telling me?</p> <p>17 A Yes.</p> <p>18 Q So for this particular week, you</p> <p>19 wanted to ensure that Mr. Esteban Perez was</p> <p>20 going to get his promised weekly salary of</p> <p>21 \$480, is that what you're telling me?</p> <p>22 A Yes.</p> <p>23 Q So each employee was expecting that</p> <p>24 they would receive their weekly salary, the</p> <p>25 same weekly salary each week and you just</p> <p style="text-align: right;">88</p>



<p>1 M. KIM</p> <p>2 needed to change the hourly rate so that it</p> <p>3 would come out to their promised weekly salary,</p> <p>4 is that what you're saying?</p> <p>5 A This is only for Mr. Sung's view only</p> <p>6 and the total amount paid to each employee was</p> <p>7 the most important thing which is reflected</p> <p>8 here.</p> <p>9 Q Did the employees understand that</p> <p>10 they were getting a weekly salary?</p> <p>11 A Yes, it is stated so here in this</p> <p>12 payment report form, that they were getting</p> <p>13 weekly rate. Weekly pay, yes.</p> <p>14 Q Do you understand the difference</p> <p>15 between a weekly salary and an hourly rate?</p> <p>16 A Yes.</p> <p>17 Q What is the difference?</p> <p>18 A Hourly rate is just that, hourly</p> <p>19 rate. So based on how many hours work at</p> <p>20 certain hourly rate, the weekly salary can</p> <p>21 change.</p> <p>22 Q Is that how you understood the</p> <p>23 employees were paid at Silo Café?</p> <p>24 A That is my understanding, that is my</p> <p>25 belief, I've always explained to the employees.</p> <p style="text-align: right;">89</p>	<p>1 M. KIM</p> <p>2 question?</p> <p>3 A This is the same thing, literally.</p> <p>4 Yeah, you just need to be concerned about the</p> <p>5 total salary amount for each employee, that's</p> <p>6 all.</p> <p>7 Q Thank you but the question was, would</p> <p>8 you agree that this is the staff expenditure</p> <p>9 form for the period April 27 through May 1,</p> <p>10 2015? If you can look at the date on the top</p> <p>11 of left corner, please look at the first page,</p> <p>12 I'm asking you about the first page.</p> <p>13 A Yes.</p> <p>14 Q So if you could look at the second</p> <p>15 page, do you recognize this document?</p> <p>16 A Yes.</p> <p>17 Q Would you agree that this is a wage</p> <p>18 notice signed by Mr. Felix Galindo dated April</p> <p>19 29, 2015?</p> <p>20 A Yes.</p> <p>21 Q Is that your signature in the</p> <p>22 preparer's name field?</p> <p>23 A Yes, it is myself.</p> <p>24 Q On this wage notice what is Mr.</p> <p>25 Galindo's hourly rate?</p> <p style="text-align: right;">91</p>
<p>1 M. KIM</p> <p>2 I have couple of times explained to the</p> <p>3 employees as I give them this form with their</p> <p>4 payment the content of this form. And in fact,</p> <p>5 certain employees that they wanted to have the</p> <p>6 physical copy of these payment report when they</p> <p>7 were paid their wages. So I believe they knew</p> <p>8 what the content of this document means.</p> <p>9 MS. BARBOSA: We will put aside</p> <p>10 Plaintiff's Exhibit number 6 for the time</p> <p>11 being. Mark this as Plaintiff's Exhibit</p> <p>12 7.</p> <p>13 (Whereupon, the above mentioned</p> <p>14 document was marked as Plaintiff's</p> <p>15 Exhibit 7 for identification, this date</p> <p>16 by the Reporter.)</p> <p>17 Q This document, Plaintiff's Exhibit 7</p> <p>18 consists of four pages. The first page is</p> <p>19 identified by bates stamp D001388.</p> <p>20 By looking at this document, would</p> <p>21 you agree that this is the staff expenditure</p> <p>22 form for the time period April 27 through May</p> <p>23 1, 2015?</p> <p>24 (Witness peruses the document.)</p> <p>25 Q Do you need me to repeat the</p> <p style="text-align: right;">90</p>	<p>1 M. KIM</p> <p>2 A \$10.13.</p> <p>3 Q Number 4 on this notice indicates</p> <p>4 that allowance is taken for tips, did Mr.</p> <p>5 Galindo regularly receive tips?</p> <p>6 A Yes.</p> <p>7 Q When did he receive tips?</p> <p>8 A Every day, in the morning. Yeah,</p> <p>9 what time of the day, I don't know.</p> <p>10 Q Was a credit taken against his hourly</p> <p>11 rate for the tips he received?</p> <p>12 A No.</p> <p>13 Q The wage notice indicates that his</p> <p>14 hourly rate is \$10.13 but on the front page, on</p> <p>15 the first page on the staff expenditure form,</p> <p>16 his hourly rate says 9.36; is that right?</p> <p>17 A Yes.</p> <p>18 Q So which one, which form indicates</p> <p>19 what his correct hourly rate was during this</p> <p>20 period?</p> <p>21 A This is, (indicating).</p> <p>22 Q When you say this is, you're</p> <p>23 referring to the wage notice that's dated April</p> <p>24 29, 2015?</p> <p>25 A Yes.</p> <p style="text-align: right;">92</p>

23 (Pages 89 to 92)



<p>1 M. KIM</p> <p>2 Q Did you prepare each of the wage</p> <p>3 notices in this packet?</p> <p>4 A Only when the rate changed, I</p> <p>5 reviewed them.</p> <p>6 Q That's not my question. My question</p> <p>7 is, there are one, two, three wage notices in</p> <p>8 this packet, one for Mr. Galindo, one for Mr.</p> <p>9 Perez and one for Mr. Lopez, are you the one</p> <p>10 who completed these documents and signed it?</p> <p>11 A Yes, I used, I looked at the</p> <p>12 supporting documents to fill it out and signed</p> <p>13 it for each person.</p> <p>14 Q Who instructed you to fill out this</p> <p>15 document?</p> <p>16 A My boss asked for it.</p> <p>17 Q You said your boss asked for it, your</p> <p>18 boss meaning Andrew Sung?</p> <p>19 A Yeah, Mr. Sung, Andrew Sung.</p> <p>20 Q So Mr. Sung instructed you to fill</p> <p>21 out this document; is that right?</p> <p>22 A Yes.</p> <p>23 Q When was the first time he instructed</p> <p>24 you to fill out this document?</p> <p>25 A I think somewhere starting, at the</p> <p style="text-align: right;">93</p>	<p>1 M. KIM</p> <p>2 that you mentioned at the café. But in fact,</p> <p>3 but in fact, Mr. Sung would know if there is an</p> <p>4 accountant doing those tasks.</p> <p>5 Q Who was in charge of doing the</p> <p>6 payroll?</p> <p>7 A You mean distributing wages to the</p> <p>8 employees?</p> <p>9 Q Determining how much each employee</p> <p>10 would receive, if the person was paid by check,</p> <p>11 making sure the check was created for that</p> <p>12 employee and then distributing the payment to</p> <p>13 employees?</p> <p>14 A About a year or two I believe the</p> <p>15 owner, Mr. Sung, managed that himself, and upon</p> <p>16 my being hired, I took care of those payroll</p> <p>17 duties.</p> <p>18 Q Are you saying that for the first two</p> <p>19 years that you were employed by the café, Mr.</p> <p>20 Sung was in charge of the payroll and then</p> <p>21 after your second year, you took over?</p> <p>22 A Yes; correct.</p> <p>23 Q Does 50 Food Corp have a bank</p> <p>24 account?</p> <p>25 A Yes.</p> <p style="text-align: right;">95</p>
<p>1 M. KIM</p> <p>2 end of 2009 or early 2010, about then.</p> <p>3 Q What did he tell you about this</p> <p>4 document and how often it needed to be filled</p> <p>5 out?</p> <p>6 A He said that when we have new hire we</p> <p>7 have to use these forms to inform the new hire</p> <p>8 as well as to update the hourly rate when</p> <p>9 necessary.</p> <p>10 Q Did he only have a discussion with</p> <p>11 you about the importance of completing this</p> <p>12 document once or did you guys have several</p> <p>13 conversations about this document?</p> <p>14 A More than once did he tell me this.</p> <p>15 Q How many times would he instruct you</p> <p>16 to complete this document?</p> <p>17 A I believe he said it about three to</p> <p>18 four times.</p> <p>19 Q And would it be correct to say that</p> <p>20 the information in these notices are accurate?</p> <p>21 A I believe they are accurate because I</p> <p>22 filled them out myself.</p> <p>23 Q Does Silo Café have a bookkeeper or</p> <p>24 accountant?</p> <p>25 A No bookkeeper, no one, the capacity</p> <p style="text-align: right;">94</p>	<p>1 M. KIM</p> <p>2 Q Who has access to the bank account?</p> <p>3 A Mr. Sung did.</p> <p>4 Q Do you have access to the bank</p> <p>5 account?</p> <p>6 A Only thing I did was to make</p> <p>7 deposits, that's it.</p> <p>8 Q How would you receive the cash to pay</p> <p>9 salaries to the employees?</p> <p>10 A We normally used the money cashes</p> <p>11 from sales, if we needed more, Mr. Sung would</p> <p>12 bring it.</p> <p>13 Q How often would Mr. Sung provide the</p> <p>14 cash to you that you used to pay the employees?</p> <p>15 A For about a year or two after I</p> <p>16 started working there, he would frequently fund</p> <p>17 the cash needed to pay wages to the employees.</p> <p>18 Q And then after those first two years?</p> <p>19 A So for about a year or two, he more</p> <p>20 or less stopped and again started, but recently</p> <p>21 started again funding cash to pay wages to</p> <p>22 employees recently, in recent years.</p> <p>23 Q Beginning in what year, we are in</p> <p>24 2018 now?</p> <p>25 A I -- from last year or beginning year</p> <p style="text-align: right;">96</p>

<p>1 M. KIM</p> <p>2 2016.</p> <p>3 Q What day is usually payday?</p> <p>4 A Wednesday or Friday. But we often</p> <p>5 paid more on Wednesdays compared to Friday.</p> <p>6 Q Would Mr. Sung be at the café on</p> <p>7 Wednesdays when you would pay employees?</p> <p>8 A It's not regular, but it all depends,</p> <p>9 you know, how much money I need and when I need</p> <p>10 it, so he could be just to come in Wednesday, I</p> <p>11 mean Monday evening to bring cash, and he would</p> <p>12 just normally leave, he doesn't stay in the</p> <p>13 store.</p> <p>14 Q Do you know if 50 Food Corp carries</p> <p>15 any insurance policies?</p> <p>16 A Of course.</p> <p>17 Q What insurance policies are you aware</p> <p>18 that 50 Food Corp has?</p> <p>19 A Something from umbrella company. I</p> <p>20 don't know exactly what insurance that was for.</p> <p>21 But I do -- I'm aware there is insurance for</p> <p>22 the store.</p> <p>23 Q You indicated earlier that the 50</p> <p>24 Food Corp does have a bank account that both</p> <p>25 you and Mr. Sung have access to, is there only</p> <p style="text-align: right;">97</p>	<p>1 M. KIM</p> <p>2 Q So I just have a few questions</p> <p>3 regarding the operations of the business.</p> <p>4 Who typically would be responsible</p> <p>5 for opening the mail that 50 Food Corp would</p> <p>6 receive?</p> <p>7 A So mail from Con Edison or Verizon or</p> <p>8 utility bills, I open and manage them, but</p> <p>9 anything else more important than that, would</p> <p>10 be under Mr. Sung's management.</p> <p>11 Q Would you be in charge of paying both</p> <p>12 the Con Ed and the Verizon bill?</p> <p>13 A Sometimes I do, sometimes I don't.</p> <p>14 Q I think you indicated earlier that</p> <p>15 Mr. Sung would give you a check on a monthly</p> <p>16 basis to pay the rent; is that right?</p> <p>17 A Yes.</p> <p>18 Q Besides Con Ed, Verizon and basic</p> <p>19 utilities, what other bills would 50 Food Corp</p> <p>20 regularly receive?</p> <p>21 A We would get bills for uniforms.</p> <p>22 Q What types of uniforms?</p> <p>23 A Those were for the employees,</p> <p>24 something similar to chef uniforms.</p> <p>25 Q What employees would use uniforms?</p> <p style="text-align: right;">99</p>
<p>1 M. KIM</p> <p>2 one bank account or several bank accounts?</p> <p>3 A It's actually only accessible by my</p> <p>4 boss, Mr. Sung.</p> <p>5 Q But you were able to make deposits?</p> <p>6 A Merely, only deposits.</p> <p>7 Q How many bank accounts are you aware</p> <p>8 that 50 Food Corp has?</p> <p>9 A I know there's only one.</p> <p>10 Q Okay, you're aware of only one?</p> <p>11 A Yeah.</p> <p>12 Q What bank is it?</p> <p>13 A Citibank.</p> <p>14 Q What location do you go to to make</p> <p>15 your deposits?</p> <p>16 A It's actually just across the street</p> <p>17 from the store on Third Avenue.</p> <p>18 Q Is the account in Mr. Sung's name or</p> <p>19 the corporation's name?</p> <p>20 A It's 50 Corporation.</p> <p>21 MS. BARBOSA: Off the record.</p> <p>22 (Whereupon, an off the record</p> <p>23 discussion was held.)</p> <p>24 (Whereupon, a short recess was</p> <p>25 taken, time noted: 2:08-2:33 PM.)</p> <p style="text-align: right;">98</p>	<p>1 M. KIM</p> <p>2 A Everyone does.</p> <p>3 Q How many uniforms were given to each</p> <p>4 employee?</p> <p>5 A They get it every day, new one.</p> <p>6 Q They get a new uniform every day?</p> <p>7 A Yes.</p> <p>8 Q What does the uniform consist of?</p> <p>9 A Chef uniform.</p> <p>10 Q Please describe to me what that is?</p> <p>11 A The gown, the chef uniform.</p> <p>12 Q Is it a shirt?</p> <p>13 A Just a top short top, uniform, like a</p> <p>14 chef wears.</p> <p>15 Q Like a jacket, like a white jacket,</p> <p>16 is that what you mean?</p> <p>17 A Yes.</p> <p>18 Q Is that the only thing the uniform</p> <p>19 would consist of?</p> <p>20 A Other than that, there was another</p> <p>21 type made out of lighter fabric, but that's the</p> <p>22 same type.</p> <p>23 Q So besides this jacket, that was the</p> <p>24 uniform, the jacket, that's it?</p> <p>25 A That and apron, rags for washing.</p> <p style="text-align: right;">100</p>

<p>1 M. KIM</p> <p>2 Q This chef white jacket that you</p> <p>3 described, was that made out of a cotton</p> <p>4 material?</p> <p>5 A Right.</p> <p>6 Q And the employees received a brand</p> <p>7 new white cotton chef jacket every day?</p> <p>8 A Depending upon the vendor that we</p> <p>9 use, sometimes they replenish the new fresh</p> <p>10 washed uniform or a brand new uniform daily.</p> <p>11 Q And the employees never took home</p> <p>12 this jacket, they would just return it to you</p> <p>13 when they were done for the day and you would</p> <p>14 send it to a company to be laundered; is that</p> <p>15 what you mean?</p> <p>16 A Yes.</p> <p>17 Q Did employees have to pay for their</p> <p>18 uniforms?</p> <p>19 A No.</p> <p>20 Q Did they have to pay for the</p> <p>21 laundering of their uniforms?</p> <p>22 A No.</p> <p>23 Q You indicated earlier that the</p> <p>24 plaintiffs in this lawsuit were always paid by</p> <p>25 cash; is that right?</p> <p style="text-align: right;">101</p>	<p>1 M. KIM</p> <p>2 half cash, half check, what positions do they</p> <p>3 hold in the company?</p> <p>4 A Regardless of their title position</p> <p>5 it's paid the way they wanted to be paid.</p> <p>6 Q My question is, what positions, what</p> <p>7 positions right now are being paid by half</p> <p>8 cash, half check?</p> <p>9 A The cashier and the chef.</p> <p>10 Q Anyone else?</p> <p>11 A Myself.</p> <p>12 Q Paid both by cash and by check?</p> <p>13 A Actually the -- we get more than half</p> <p>14 in cash.</p> <p>15 Q And the checks you receive are 50</p> <p>16 Food Corp checks?</p> <p>17 A Yes.</p> <p>18 Q Are employees paid by weekly</p> <p>19 salaries, daily rates or hourly rates?</p> <p>20 A They are paid by hourly rate, every</p> <p>21 week.</p> <p>22 Q Every single employee is paid an</p> <p>23 hourly rate?</p> <p>24 A Exclusion of myself and the chef.</p> <p>25 Q Who determines what an individual's</p> <p style="text-align: right;">103</p>
<p>1 M. KIM</p> <p>2 A Yes.</p> <p>3 Q How about some, how about the other</p> <p>4 workers at 50 Food Corp., were these</p> <p>5 individuals paid by cash or by check?</p> <p>6 A Nearly all the employees wanted to be</p> <p>7 paid by cash, yeah, so, and then for those who</p> <p>8 wanted to be paid by check, we accommodated</p> <p>9 their request as well.</p> <p>10 Q I appreciate the information about</p> <p>11 what employees preferred, but I guess I would</p> <p>12 like to know currently, for example, currently,</p> <p>13 how many employees are paid just by cash?</p> <p>14 A I guess about ten employees, let's</p> <p>15 just say that most employees from South America</p> <p>16 all wanted to be paid by cash.</p> <p>17 Q So ten out of the twelve to thirteen</p> <p>18 are all paid in cash?</p> <p>19 A Yes.</p> <p>20 Q And what individuals are -- are the</p> <p>21 other two to three employees paid just all of</p> <p>22 it in check?</p> <p>23 A The remaining two or three are paid</p> <p>24 half cash, half check.</p> <p>25 Q What employees are those who receive</p> <p style="text-align: right;">102</p>	<p>1 M. KIM</p> <p>2 pay rate is?</p> <p>3 A About what rate or what the wage they</p> <p>4 would be? It's ultimately decided by the</p> <p>5 owner, Mr. Sung.</p> <p>6 Q When you say it's ultimately decided</p> <p>7 by the owner, when would he make this decision,</p> <p>8 for example, if you had a new employee?</p> <p>9 A So upon hiring an individual, he</p> <p>10 would -- I would compare existing employee</p> <p>11 currently doing similar work the new individual</p> <p>12 would be hired for and offer comparative rate,</p> <p>13 but for example, if I'm paying someone \$500</p> <p>14 weekly for the same, the capacity as the new</p> <p>15 hired, I would not be able to pay \$550.00 to a</p> <p>16 new hire.</p> <p>17 Q What role does Mr. Sung play in this</p> <p>18 decision-making?</p> <p>19 A But what I really wanted to say is</p> <p>20 that I cannot offer new hire what is not really</p> <p>21 comparable to existing employee doing the same</p> <p>22 capacity, paying him \$50.00 more or a hundred</p> <p>23 dollars more weekly. So I would have to confer</p> <p>24 with the owner for anything like that for his</p> <p>25 ultimate decision.</p> <p style="text-align: right;">104</p>

<p>1 M. KIM</p> <p>2 Q My understanding of what you just</p> <p>3 said is that you had the power to offer the</p> <p>4 same salary to new employees as the employee</p> <p>5 who held that position earlier, any change to</p> <p>6 that already fixed rate would have to be</p> <p>7 confirmed by the owner; is that what you're</p> <p>8 telling me?</p> <p>9 A Yes.</p> <p>10 Q Thank you. In reviewing the</p> <p>11 documents that were produced in response to</p> <p>12 plaintiff's request, I see that it was quite</p> <p>13 common for employees to receive raises; is that</p> <p>14 right?</p> <p>15 A Yes.</p> <p>16 Q Who would make the decision to give</p> <p>17 employees raises?</p> <p>18 A So I really want to go back to the</p> <p>19 nature of our business. Based on our location</p> <p>20 we can only do five days a week as I mentioned</p> <p>21 before, but there are times when we can only</p> <p>22 offer three to four days a week, so the owner</p> <p>23 tries to make up for that loss by gifting</p> <p>24 bonuses for half day or for a full day and that</p> <p>25 used to be the way it had been, but since the</p> <p style="text-align: right;">105</p>	<p>1 M. KIM</p> <p>2 Q Who has access to that office?</p> <p>3 A Actually just myself and Mr. Sung,</p> <p>4 but I did keep it open because sometimes</p> <p>5 employees need supplies such as like gloves and</p> <p>6 things like that for their work and I wanted</p> <p>7 them to be able to help themselves.</p> <p>8 Q Where in that office are files kept?</p> <p>9 A Some were in the computer, some were</p> <p>10 in the box.</p> <p>11 Q So you're saying that there are</p> <p>12 documents that are stored electronically in the</p> <p>13 computer?</p> <p>14 A They might be, they might be. Only</p> <p>15 to the extent something like this, which I was</p> <p>16 involved in preparing, but any other related,</p> <p>17 business related document, I cannot really say.</p> <p>18 Q Okay. Are there any paper documents,</p> <p>19 based on your knowledge, that is kept, that are</p> <p>20 kept in that office?</p> <p>21 A I think it's probably likely there</p> <p>22 must have been hard copies of documents, but I</p> <p>23 have no independent confirmation for that.</p> <p>24 Q How often do you use that office?</p> <p>25 A I open the office, that office, so I</p> <p style="text-align: right;">107</p>
<p>1 M. KIM</p> <p>2 decline of business, the owner was not able to</p> <p>3 continue those bonuses.</p> <p>4 Q Thank you for that information. But</p> <p>5 I want you to answer the question I asked;</p> <p>6 okay?</p> <p>7 The question is, who makes the</p> <p>8 decision to give employees raises?</p> <p>9 A By Mr. Sung.</p> <p>10 Q Is there a place where files or</p> <p>11 papers, a particular place where file or papers</p> <p>12 are kept at Silo Café?</p> <p>13 A I believe it's in Mr. Sung's</p> <p>14 possession.</p> <p>15 Q My question is where at Silo Café are</p> <p>16 documents related to the business kept, where?</p> <p>17 A In the office where he is, in Mr.</p> <p>18 Sung's office.</p> <p>19 Q When you say Mr. Sung's office, are</p> <p>20 you referring to a space within the café at 805</p> <p>21 Third Avenue?</p> <p>22 A Yes.</p> <p>23 Q So there is an office, is it in the</p> <p>24 back?</p> <p>25 A Next to the kitchen.</p> <p style="text-align: right;">106</p>	<p>1 M. KIM</p> <p>2 go there every day, every morning.</p> <p>3 Q Are there cabinets in the office?</p> <p>4 A Yeah, a small cabinet, yes.</p> <p>5 Q Are you aware of what's inside that</p> <p>6 cabinet?</p> <p>7 A I don't -- I'm not interested, but I</p> <p>8 personally organize vendor invoices in that</p> <p>9 office.</p> <p>10 Q I understand that you're not</p> <p>11 interested what's in the cabinets, but do you</p> <p>12 know what's in the cabinets?</p> <p>13 A In fact I really don't.</p> <p>14 Q There's only one cabinet in the</p> <p>15 office?</p> <p>16 A There are two small cabinets.</p> <p>17 Q Do you have any knowledge of what's</p> <p>18 kept in that second cabinet?</p> <p>19 A I seem to remember seeing some</p> <p>20 blueprints or like a construction related</p> <p>21 drawings and I knew that Mr. Sung used to be</p> <p>22 some kind of architect. That was my</p> <p>23 understanding.</p> <p>24 Q So have you ever stored anything in</p> <p>25 any of those cabinets?</p> <p style="text-align: right;">108</p>

<p>1 M. KIM</p> <p>2 A My, anything that belongs to me, you</p> <p>3 mean?</p> <p>4 Q Could belong to you, could belong to</p> <p>5 the company, have you ever put anything in the</p> <p>6 cabinet?</p> <p>7 A Of the two cabinets I only used one</p> <p>8 that was in use for vendors only.</p> <p>9 Q Where would you store the attendance</p> <p>10 records that you described earlier?</p> <p>11 A Initially it was kept in one of those</p> <p>12 two cabinets, but we been maintaining for many,</p> <p>13 many years and we needed to put more</p> <p>14 information as well, so I put those records in</p> <p>15 a box and left it on the floor.</p> <p>16 Q Is that box still there?</p> <p>17 A Well, I do want to explain that those</p> <p>18 documents that were kept in the box which was</p> <p>19 on the floor, over half of it got damaged</p> <p>20 because there was a flooding situation in that</p> <p>21 wooden floor where the folder box was kept, you</p> <p>22 might be aware of that incident that happened</p> <p>23 to our store, with flooding situation.</p> <p>24 Q Didn't you tell me earlier that you</p> <p>25 handed over some of these written attendance</p> <p style="text-align: right;">109</p>	<p>1 M. KIM</p> <p>2 You handed over some documents that</p> <p>3 you described earlier as attendance records to</p> <p>4 Mr. Sung; is that right?</p> <p>5 A Yes.</p> <p>6 Q Where are those documents now?</p> <p>7 A Those are being kept by Mr. Sung</p> <p>8 because I gave it to him.</p> <p>9 Q Okay. So right now if you were to</p> <p>10 return to the office at 805 Third Avenue there</p> <p>11 would be no box or no place in the office where</p> <p>12 these attendance records would be; is that what</p> <p>13 you're telling me?</p> <p>14 A Correct.</p> <p>15 Q Thank you. Do you have a set policy</p> <p>16 as to how long hard copy documents are kept in</p> <p>17 the office of Silo Café?</p> <p>18 A Mr. Sung did not make a specific</p> <p>19 mention about it, but I thought about three</p> <p>20 years would be reasonable.</p> <p>21 Q Is that more or less how long</p> <p>22 documents are maintained for?</p> <p>23 A Yes, I would have to say that is</p> <p>24 fair, fairly accurate.</p> <p>25 Q You mentioned that there's a computer</p> <p style="text-align: right;">111</p>
<p>1 M. KIM</p> <p>2 records to Mr. Sung?</p> <p>3 A I did, but so I need to elaborate</p> <p>4 that. I did hand over what Mr. Sung asked for,</p> <p>5 but as I said, it was accumulated for many,</p> <p>6 many years and for the old ones I had placed</p> <p>7 them in a large box and left them on the wood</p> <p>8 floor and the more recent ones, I'm maintaining</p> <p>9 them well now.</p> <p>10 Q Where are the documents that you gave</p> <p>11 to Mr. Kim within the last couple of months,</p> <p>12 attendance records, where are the attendance</p> <p>13 records that you gave to Mr. Sung, that you</p> <p>14 gave to him within the last couple of months?</p> <p>15 A The reason was, which is part of what</p> <p>16 I submitted to Mr. Sung at his request, are</p> <p>17 being well kept and maintained, but I was</p> <p>18 really referring to the old ones which I</p> <p>19 decided, which I had, keep in a box on wooden</p> <p>20 floor, which later got soaked from flooding</p> <p>21 situation.</p> <p>22 Q I want you to make sure to listen to</p> <p>23 my question carefully and try just to answer</p> <p>24 what I'm asking you or we are going to be here</p> <p>25 much longer.</p> <p style="text-align: right;">110</p>	<p>1 M. KIM</p> <p>2 in this office; is that right?</p> <p>3 A Yes.</p> <p>4 Q Who is able to use this computer?</p> <p>5 A Mr. Sung and myself.</p> <p>6 Q Is there a password on the computer?</p> <p>7 A Yes.</p> <p>8 Q And only you and Mr. Sung know what</p> <p>9 the password is?</p> <p>10 A Yes.</p> <p>11 Q And there are employment records that</p> <p>12 are saved on this computer; right?</p> <p>13 A I don't think there's anything in the</p> <p>14 computer other than what we just went over.</p> <p>15 Q Okay. I'm just going to draw your</p> <p>16 attention back to Plaintiff's Exhibit number 6,</p> <p>17 do you have that, it's the packet with the date</p> <p>18 range of March 4 to March 8, 2013; are you</p> <p>19 looking at that?</p> <p>20 THE INTERPRETER: April 3, you said.</p> <p>21 Q I said March 4, if you can turn to</p> <p>22 the second page, so this example of the payment</p> <p>23 report, where are these payment reports kept?</p> <p>24 A This particular one?</p> <p>25 Q Not that particular one, but just the</p> <p style="text-align: right;">112</p>



<p>1 M. KIM</p> <p>2 payment reports in general?</p> <p>3 A This is in the store.</p> <p>4 Q In the office?</p> <p>5 A Yes.</p> <p>6 Q In one of the cabinets?</p> <p>7 A It's actually outside on the shelf.</p> <p>8 MS. BARBOSA: Very good, thank you.</p> <p>9 Q You said earlier that you would be</p> <p>10 responsible for showing this payment report to</p> <p>11 employees at the end of the week and obtaining</p> <p>12 their signature; is that correct?</p> <p>13 A Yes.</p> <p>14 Q Would you meet with employees</p> <p>15 individually to give them their pay?</p> <p>16 A Yes.</p> <p>17 Q Where would you meet with them?</p> <p>18 A In the office.</p> <p>19 Q Would you just call employees in one</p> <p>20 by one?</p> <p>21 A Since each employee ends their day at</p> <p>22 different times, they would just come and see</p> <p>23 me based on when they leave for work.</p> <p>24 Q And would this payment report always</p> <p>25 be completely filled out prior to requesting</p> <p style="text-align: right;">113</p>	<p>1 M. KIM</p> <p>2 sign each time they received wages.</p> <p>3 Q Are you thinking of one employee or</p> <p>4 more than one employee?</p> <p>5 A It did apply to other employees as</p> <p>6 well.</p> <p>7 Q Did it apply to the Plaintiffs,</p> <p>8 Esteban Perez, Felipe Gallindo and Delfino</p> <p>9 Lopez?</p> <p>10 A I don't know exactly when that was,</p> <p>11 but I do remember having at least one of them</p> <p>12 sign multiple payment report.</p> <p>13 Q So not all three, but just one of</p> <p>14 them?</p> <p>15 A All of those three, and then more,</p> <p>16 other employees as well.</p> <p>17 Q So you recall these three plaintiffs</p> <p>18 being required to sign multiple payment reports</p> <p>19 in one occasion; is that right?</p> <p>20 A My answer is yes, but Mr. Sung is not</p> <p>21 aware of it.</p> <p>22 Q Can you recall more or less when this</p> <p>23 happened?</p> <p>24 A As I explained I do not know when,</p> <p>25 what time period that that was.</p> <p style="text-align: right;">115</p>
<p>1 M. KIM</p> <p>2 the employees to sign?</p> <p>3 A Yes.</p> <p>4 Q I believe that you testified earlier</p> <p>5 that sometimes you would forget to have the</p> <p>6 employees sign this payment report because for</p> <p>7 whatever reason, perhaps you were too busy; is</p> <p>8 that right?</p> <p>9 A Yes.</p> <p>10 Q Could you recall an occasion where</p> <p>11 perhaps you would ask employees to sign more</p> <p>12 than one payment report at the same time?</p> <p>13 A Yes, I had. I want to say that if</p> <p>14 there were new workers I wouldn't do that, but</p> <p>15 these workers have worked with me for a very</p> <p>16 many years.</p> <p>17 Q Would you ever ask employees to sign</p> <p>18 five payment reports in one sitting?</p> <p>19 A Only on one occasion, although Mr.</p> <p>20 Sung is not aware of this incident, I had on</p> <p>21 one occasion had an employee sign a multiple</p> <p>22 payment report and I think that was because I</p> <p>23 needed, was shorthanded at the store and I had</p> <p>24 to personally perform a lot of duties and</p> <p>25 missed out, missed out on having an employee</p> <p style="text-align: right;">114</p>	<p>1 M. KIM</p> <p>2 Q Was it two years ago, three years</p> <p>3 ago?</p> <p>4 A I don't remember.</p> <p>5 Q Now, when you say that you recall</p> <p>6 that employees including the three plaintiffs</p> <p>7 in this case were required to sign multiple</p> <p>8 payment reports in one setting, when you say</p> <p>9 multiple, how many payment reports do you think</p> <p>10 you're talking about, more than ten?</p> <p>11 A I do not recall that, how many. And</p> <p>12 I'm saying I did, but I don't know when that</p> <p>13 was.</p> <p>14 Q I understand that you don't remember</p> <p>15 when and you do not remember the exact amount</p> <p>16 of payment reports that the plaintiffs and</p> <p>17 other employees were required to sign, what I'm</p> <p>18 asking is for you to try to remember an</p> <p>19 estimate, so is it possible that the employees</p> <p>20 including the three plaintiffs were required to</p> <p>21 sign more than five?</p> <p>22 A As I said, it's very difficult to</p> <p>23 recall, while I can clearly recollect that</p> <p>24 there were incidents like that where an</p> <p>25 employee had to sign multiple payment report in</p> <p style="text-align: right;">116</p>

<p>1 M. KIM</p> <p>2 one sitting, but again, I can't recall if there</p> <p>3 were three or four or five or ten. I really</p> <p>4 cannot testify to that.</p> <p>5 Q Do you recall whether there was more</p> <p>6 than one instance in which employees including</p> <p>7 the three plaintiffs were required to sign</p> <p>8 multiple payment reports?</p> <p>9 A In the last ten years there had to</p> <p>10 have been at least two or three times, I would</p> <p>11 say.</p> <p>12 Q And again, when you say that there</p> <p>13 were multiple payment reports that they signed,</p> <p>14 were these payment reports completed, was the</p> <p>15 information filled out on the table?</p> <p>16 A Of course.</p> <p>17 Q Is there another Silo Café located in</p> <p>18 New York City?</p> <p>19 A Yes, there is one more with the same</p> <p>20 business name.</p> <p>21 Q Is this the Silo Café that's located</p> <p>22 at 31 East 32 Street?</p> <p>23 A I believe that is correct.</p> <p>24 Q Have you ever visited this Silo Café?</p> <p>25 A I did.</p> <p style="text-align: right;">117</p>	<p>1 M. KIM</p> <p>2 Department of Labor investigated the Silo Café</p> <p>3 located at 31 East 32 Street?</p> <p>4 A I was told that it happened, after</p> <p>5 this lawsuit began.</p> <p>6 Q Who told you?</p> <p>7 A Mr. Sung.</p> <p>8 Q On what occasion did he talk to you</p> <p>9 about the Department of Labor investigation?</p> <p>10 A As I said, upon receiving the papers</p> <p>11 for this lawsuit, he mentioned it.</p> <p>12 Q What did he say about it?</p> <p>13 MR. VARACALLI: Objection,</p> <p>14 privileged, don't answer.</p> <p>15 MS. BARBOSA: What's privileged? I</p> <p>16 am asking him what he spoke to with</p> <p>17 Andrew Sung.</p> <p>18 MR. VARACALLI: Because it's two</p> <p>19 managers discussing a legal issue and for</p> <p>20 purposes of privilege within the</p> <p>21 corporation, since they are two</p> <p>22 representatives of the company, they have</p> <p>23 privilege between them when discussing</p> <p>24 legal matters. Now, when they're</p> <p>25 discussing non legal matters, by all</p> <p style="text-align: right;">119</p>
<p>1 M. KIM</p> <p>2 Q How many times have you visited the</p> <p>3 Silo Café located at 31 East 32 Street?</p> <p>4 A Under ten times.</p> <p>5 Q Under ten times?</p> <p>6 A Yes.</p> <p>7 Q Who manages the Silo Café located at</p> <p>8 31 East 32 Street?</p> <p>9 A I don't know because at that business</p> <p>10 there's too many turnover of managers.</p> <p>11 Q For what purpose would you visit</p> <p>12 during the ten times that you described</p> <p>13 earlier?</p> <p>14 A It's normally when I need to pick up</p> <p>15 something from that location, including like</p> <p>16 business hat or some supplies.</p> <p>17 Q Does Mr. Sung own the Silo Café</p> <p>18 located at 31 East 32 Street?</p> <p>19 A I don't know for sure. I can only</p> <p>20 guess he must be because it's the same business</p> <p>21 name.</p> <p>22 Q Have you ever met with Mr. Sung at</p> <p>23 the Silo Café located at 31 East 32 Street?</p> <p>24 A I have once or twice.</p> <p>25 Q Are you aware that the New York City</p> <p style="text-align: right;">118</p>	<p>1 M. KIM</p> <p>2 means, but this is about the</p> <p>3 investigation.</p> <p>4 MS. BARBOSA: I am not aware of any</p> <p>5 privilege that would prohibit him from</p> <p>6 discussing a matter with someone who is</p> <p>7 not his attorney.</p> <p>8 MR. VARACALLI: Management can</p> <p>9 discuss between them what their legal</p> <p>10 strategy is.</p> <p>11 MS. BARBOSA: Sure.</p> <p>12 MR. VARACALLI: And they are not</p> <p>13 going to waive their privilege in the</p> <p>14 same way that any organization has a</p> <p>15 managerial structure. Has the ability to</p> <p>16 do that.</p> <p>17 MS. BARBOSA: I am not specifically</p> <p>18 asking about his strategy, I am just</p> <p>19 asking what they discussed about the DOE</p> <p>20 investigation. I'm confused as to how</p> <p>21 that is privileged and confidential.</p> <p>22 MR. VARACALLI: If you have a</p> <p>23 particular question that's non legal in</p> <p>24 nature, then I suggest that you answer</p> <p>25 it, but as the company attorney, I don't</p> <p style="text-align: right;">120</p>

<p>1 M. KIM</p> <p>2 know what his response will be.</p> <p>3 MS. BARBOSA: Why don't we see what</p> <p>4 his response is?</p> <p>5 MR. VARACALLI: If you have a</p> <p>6 particular question about the</p> <p>7 conversation, I suggest you ask it, but</p> <p>8 if it's phrased like that, I will have to</p> <p>9 object for privilege.</p> <p>10 MS. BARBOSA: Why don't you just</p> <p>11 instruct him not to answer any questions</p> <p>12 involving legal strategy, why don't you</p> <p>13 just object to that, but I am asking a</p> <p>14 general question about what two people</p> <p>15 who worked for a business, talked about</p> <p>16 regarding an investigation.</p> <p>17 MR. VARACALLI: Okay. Mr. Kim, Mr.</p> <p>18 Kim, you're not to discuss any</p> <p>19 discussions about legal strategy, any</p> <p>20 discussions about the defense or merits</p> <p>21 of the investigation. Everything else</p> <p>22 you can answer.</p> <p>23 THE WITNESS: But in fact there was</p> <p>24 no contents of that sort.</p> <p>25 Q What did he tell you, you told me</p> <p style="text-align: right;">121</p>	<p>1 M. KIM</p> <p>2 Corp due to the department of labor</p> <p>3 investigation at 31 East 32 Street?</p> <p>4 A How should I explain this?</p> <p>5 Q You can take a few seconds to think</p> <p>6 about it?</p> <p>7 A It's hard to read what he intended</p> <p>8 because he's really not a very talkative</p> <p>9 person. So looking back in retrospect, I think</p> <p>10 that -- so because of that investigation, that</p> <p>11 was probably the reason why he emphasized on</p> <p>12 paperwork keeping and maintaining good records</p> <p>13 and paperwork.</p> <p>14 Q Do you recall when this conversation</p> <p>15 was with Mr. Sung regarding the DOL</p> <p>16 investigation and what instructions or</p> <p>17 recommendations he made for you because of this</p> <p>18 investigation?</p> <p>19 A Actually he is so not talkative, even</p> <p>20 when he goes to Korea he doesn't even check</p> <p>21 anything, other than just to call once and then</p> <p>22 just find out how things are going.</p> <p>23 Q Thank you, but that doesn't answer my</p> <p>24 question.</p> <p>25 My question is, can you recall more</p> <p style="text-align: right;">123</p>
<p>1 M. KIM</p> <p>2 that you guys were discussing the New York</p> <p>3 State Department of Labor investigation, can</p> <p>4 you tell me what you discussed?</p> <p>5 A In fact he had not, as I said before,</p> <p>6 upon the litigation, he told me that 32 Street</p> <p>7 store was under investigation of the labor</p> <p>8 department.</p> <p>9 Q Did he say anything else regarding</p> <p>10 the department of labor investigation?</p> <p>11 A What is there to discuss? Because</p> <p>12 it's already been done that they were</p> <p>13 investigated. In fact, Mr. Sung said that this</p> <p>14 is not to be my concern, because this is going</p> <p>15 to be potential headache and not to concern</p> <p>16 myself with that investigation.</p> <p>17 Q So the only thing he told you related</p> <p>18 to the department of labor investigation is</p> <p>19 that there was an investigation and you</p> <p>20 shouldn't worry yourself about it; is that what</p> <p>21 you're saying?</p> <p>22 A That is correct. Because there's</p> <p>23 nothing I can do, in fact, about that.</p> <p>24 Q Did he instruct or encourage you to</p> <p>25 make any changes in your practices at 50 Food</p> <p style="text-align: right;">122</p>	<p>1 M. KIM</p> <p>2 or less when you had this conversation with Mr.</p> <p>3 Sung about the DOL investigation?</p> <p>4 A Must have been about three to four</p> <p>5 years ago, I am not really certain.</p> <p>6 Q And you just testified that Mr. Sung</p> <p>7 encouraged you to be very vigilant about the</p> <p>8 paperwork in light of the DOL investigation; is</p> <p>9 that right?</p> <p>10 A Yeah, this is my view now, after</p> <p>11 having learned about the investigation of the</p> <p>12 other store because he had not made any mention</p> <p>13 about that on prior occasions.</p> <p>14 Q I don't understand. Did he speak</p> <p>15 with you about the department of labor</p> <p>16 investigation and give you recommendations or</p> <p>17 not?</p> <p>18 A Regarding the 32 Street store</p> <p>19 situation, I heard about that investigation by</p> <p>20 labor department, either October, October last</p> <p>21 year, which is really the same date I received</p> <p>22 this notification for litigation. And then Mr.</p> <p>23 Sung at the time told me about that</p> <p>24 investigation at the 32 Street store so now</p> <p>25 looking back, I'm connecting that that was the</p> <p style="text-align: right;">124</p>

31 (Pages 121 to 124)

<p>1 M. KIM</p> <p>2 reason why Mr. Sung told me about maintaining</p> <p>3 the documents more vigilantly.</p> <p>4 Q Was it in that same conversation that</p> <p>5 he told you about the DOL investigation that he</p> <p>6 told you to be very careful about keeping</p> <p>7 paperwork?</p> <p>8 A You mean referring back three or four</p> <p>9 years ago or right now?</p> <p>10 Q So are you telling me that you had</p> <p>11 two conversations with Mr. Sung about the DOL</p> <p>12 investigation?</p> <p>13 A Yeah. Okay, he only mentioned, only</p> <p>14 once regarding 32 Street store being</p> <p>15 investigated by the labor department, when I --</p> <p>16 when we receive this lawsuit notification.</p> <p>17 Q Great. Okay. So in that</p> <p>18 conversation in October of 2017, when he spoke</p> <p>19 to you about the department of labor</p> <p>20 investigation, besides telling you, my store at</p> <p>21 31 East 32 Street is being investigated, what</p> <p>22 else did he tell you regarding the</p> <p>23 investigation, that's all I want to know?</p> <p>24 A Just that he will take care of it,</p> <p>25 like I said that I should not be concerned</p> <p style="text-align: right;">125</p>	<p>1 M. KIM</p> <p>2 A No, I just made that decision to hire</p> <p>3 him by myself.</p> <p>4 Q Were you filling a position that was</p> <p>5 vacant?</p> <p>6 A Yes, I was finding, looking for a</p> <p>7 replacement for a vacancy.</p> <p>8 Q What was he hired to do, Mr. Perez?</p> <p>9 A He was working the cold cut area</p> <p>10 making sandwiches.</p> <p>11 Q And do you recall more or less what</p> <p>12 year he was hired?</p> <p>13 A It's very hard to recall exactly.</p> <p>14 Q Has his schedule always remained the</p> <p>15 same?</p> <p>16 A Always, yes.</p> <p>17 Q What about that change in January of</p> <p>18 2015 that you described to me?</p> <p>19 THE INTERPRETER: January 2015, you</p> <p>20 said?</p> <p>21 MS. BARBOSA: Yes.</p> <p>22 A I believe starting 2015 we change to</p> <p>23 eight hours a day.</p> <p>24 Q And that change applied to Mr. Perez?</p> <p>25 A Everyone, not just him.</p> <p style="text-align: right;">127</p>
<p>1 M. KIM</p> <p>2 about it.</p> <p>3 Q Did he say in that conversation, hey,</p> <p>4 you should be very careful about paperwork at</p> <p>5 Silo Café at 805 Third Avenue?</p> <p>6 A Yes, he mentioned it. And I believe</p> <p>7 he meant moving forward, because there's</p> <p>8 nothing I can do to change anything that was in</p> <p>9 the past.</p> <p>10 Q Got it. Got it. Okay. Besides</p> <p>11 being vigilant about keeping paperwork, did you</p> <p>12 implement any type of new policy or did you</p> <p>13 change anything in the way you do your work</p> <p>14 because of what you heard about the department</p> <p>15 of labor investigation?</p> <p>16 A Nothing more significant other than</p> <p>17 being thorough and vigilant about keeping the</p> <p>18 documents, business documents regarding</p> <p>19 employees and other relevant documents for</p> <p>20 business.</p> <p>21 Q Who hired Esteban Perez?</p> <p>22 A I did.</p> <p>23 Q Did you run the decision regarding</p> <p>24 his hire by anyone? Did you get authorization</p> <p>25 from someone to hire Mr. Perez?</p> <p style="text-align: right;">126</p>	<p>1 M. KIM</p> <p>2 Q So prior to January 2015, Mr. Perez</p> <p>3 worked five days a weeks, nine and a half hours</p> <p>4 per day?</p> <p>5 A Yes.</p> <p>6 Q And then after January 2015 he</p> <p>7 typically only worked forty hours a week?</p> <p>8 A Yes.</p> <p>9 Q Do you recall what Mr. Perez, what</p> <p>10 his first -- what his hourly rate was when he</p> <p>11 was hired?</p> <p>12 A Something like maybe \$7.00 or up to</p> <p>13 \$8.00, something.</p> <p>14 Q Would the information in the payment</p> <p>15 report that we reviewed earlier be the most</p> <p>16 accurate reflection of what Mr. Perez was</p> <p>17 earning on a weekly basis?</p> <p>18 THE INTERPRETER: You're talking</p> <p>19 about expenditure?</p> <p>20 MS. BARBOSA: No.</p> <p>21 THE INTERPRETER: Which one?</p> <p>22 MS. BARBOSA: The payment report.</p> <p>23 THE WITNESS: This one (Indicating)?</p> <p>24 MS. BARBOSA: Yes, you're pointing</p> <p>25 to the payment report, the document.</p> <p style="text-align: right;">128</p>

<p>1 M. KIM</p> <p>2 THE WITNESS: Yes.</p> <p>3 THE INTERPRETER: So the question</p> <p>4 is, is this reflecting?</p> <p>5 Q Would those documents, the payment</p> <p>6 reports, you understand what the payment report</p> <p>7 is; right? Would the payment report be the</p> <p>8 most accurate reflection of what Mr. Perez was</p> <p>9 earning on a weekly basis?</p> <p>10 A Yes.</p> <p>11 Q What was Mr. Perez's role at Silo</p> <p>12 Café?</p> <p>13 A So he would be responsible for making</p> <p>14 cold cut sandwiches and also help out in case</p> <p>15 someone working at hot sandwich was --</p> <p>16 MS. BARBOSA: Do you want to take a</p> <p>17 second?</p> <p>18 THE INTERPRETER: I'm sorry, I will</p> <p>19 get some water.</p> <p>20 (Whereupon, a short recess was</p> <p>21 taken, time noted: 3:37-3:38 PM.)</p> <p>22 THE INTERPRETER: I meant to say not</p> <p>23 available or absent.</p> <p>24 Q Who assigned Mr. Perez his tasks?</p> <p>25 A I did.</p> <p style="text-align: right;">129</p>	<p>1 M. KIM</p> <p>2 to other employees and I would normally engage</p> <p>3 in filling the task that Mr. Perez was supposed</p> <p>4 to perform that day.</p> <p>5 Q Who hired Delfino Lopez?</p> <p>6 A Delfino and Felix had already been</p> <p>7 hired working at the store prior to my</p> <p>8 beginning, prior to my starting to work at the</p> <p>9 store.</p> <p>10 Q Do you know who hired Felipe?</p> <p>11 A I don't know.</p> <p>12 Q What was Mr. Lopez's position at Silo</p> <p>13 Café?</p> <p>14 A Yeah, he worked like a prep cook in</p> <p>15 the morning. For lunch he worked in the cold</p> <p>16 cut section.</p> <p>17 Q Would it be correct to say that</p> <p>18 similar to Mr. Perez, prior to January 2015 he</p> <p>19 worked five days a week, nine and a half hours</p> <p>20 per day?</p> <p>21 A Yes.</p> <p>22 Q And after January 2015 he worked five</p> <p>23 days a week, eight hours a day?</p> <p>24 A Yes.</p> <p>25 Q Do you recall what Mr. Lopez's salary</p> <p style="text-align: right;">131</p>
<p>1 M. KIM</p> <p>2 Q Was there any other person who would</p> <p>3 give him instructions of what to do at the</p> <p>4 café?</p> <p>5 A No.</p> <p>6 Q If Mr. Sung was present at the café,</p> <p>7 would he have the authority to give</p> <p>8 instructions to Mr. Perez?</p> <p>9 A Yes.</p> <p>10 Q Do you recall Mr. Perez ever missing</p> <p>11 a day of work?</p> <p>12 A Yes.</p> <p>13 Q Would Mr. Perez call in?</p> <p>14 A I believe he did.</p> <p>15 Q Who would he speak to when he called</p> <p>16 in?</p> <p>17 A Myself.</p> <p>18 Q When Mr. Perez would call in to say</p> <p>19 that he would be missing work, did you have to</p> <p>20 communicate this to anyone?</p> <p>21 THE INTERPRETER: I'm sorry. If he</p> <p>22 was to call --</p> <p>23 Q Would you need to communicate that</p> <p>24 Mr. Perez was missing a day of work to anyone?</p> <p>25 A Of course I would relay the message</p> <p style="text-align: right;">130</p>	<p>1 M. KIM</p> <p>2 was when you first started at Silo Café?</p> <p>3 A I do not recall.</p> <p>4 Q Do you recall whether during your</p> <p>5 time at Silo Café Mr. Lopez received any</p> <p>6 raises?</p> <p>7 A Yes, he had received the increase,</p> <p>8 salary increase.</p> <p>9 Q Who made those decisions regarding</p> <p>10 the wage increases?</p> <p>11 A As I normally do, I would make that</p> <p>12 suggestion to the owner, Mr. Sung, and it's Mr.</p> <p>13 Sung's final decision.</p> <p>14 Q Okay. Got it. Thank you.</p> <p>15 Besides yourself, is there anyone</p> <p>16 else at Silo Café who had the authority to give</p> <p>17 instructions to Mr. Lopez?</p> <p>18 A When he was temporarily working in</p> <p>19 the kitchen, it's possible for the chef to give</p> <p>20 work instructions.</p> <p>21 Q Who was the chef?</p> <p>22 A Mr. Whang.</p> <p>23 Q Mr. Whang, W O N G?</p> <p>24 THE INTERPRETER: W H A N G.</p> <p>25 A W H A N G.</p> <p style="text-align: right;">132</p>



1 M. KIM  
2 Q What is Mr. Whang's first name?  
3 A W O N M O.  
4 Q Would Mr. Sung have the authority to  
5 give Mr. Lopez instructions?  
6 A Yes.  
7 Q Do you recall Mr. Lopez missing a day  
8 of work?  
9 A Yes, he did.  
10 Q Like Mr. Perez, would he call in and  
11 speak with you directly?  
12 A Yes.  
13 Q Mr. Whang, who is the chef, does he  
14 still work at Silo Café?  
15 A Yes.  
16 Q Do you recall when he was hired?  
17 A He was hired before I was.  
18 Q So he was probably hired when the  
19 café was opened?  
20 A Very probably.  
21 Q I believe you indicated earlier that  
22 Mr. Galindo was already working at the café,  
23 Felipe Galindo was already working at the café  
24 when you started; is that right?  
25 A Yes.

133

1 M. KIM  
2 Q And Mr. Galindo continues to work at  
3 Silo Café; right?  
4 A Yes.  
5 Q What is his position?  
6 A He is grill man.  
7 Q Has that always been his position  
8 since you started at Silo Café?  
9 A Yes.  
10 Q And same as Mr. Perez and Mr. Lopez,  
11 would it be correct to say that prior to  
12 January 2015 he worked typically five days a  
13 week, nine and a half hours per day?  
14 A Yes.  
15 Q After January of 2015 he worked five  
16 days a week, eight hours a day?  
17 A Yes.  
18 Q And again, would the wage payment  
19 reports be the document that accurately.....  
20 reflects the amount of wages that Mr. Galindo  
21 received on a weekly basis?  
22 A Yes.  
23 Q Besides yourself, would it be safe to  
24 say that Mr. Sung had the authority to give  
25 instructions to Mr. Galindo during his

134


1 M. KIM  
2 employment at Silo Café?  
3 A Yes.  
4 Q And similar to Mr. Perez and Mr.  
5 Lopez, do you recall Mr. Galindo ever missing a  
6 day of work?  
7 THE INTERPRETER: You are talking  
8 about Galindo; right?  
9 MS. BARBOSA: Yes.  
10 A Actually a lot.  
11 Q And would he also call in to speak  
12 with you if he needed to miss a day of work?  
13 A Yes.  
14 Q You mentioned that Mr. Galindo called  
15 in a lot; is that right?  
16 A That is the case and another issue I  
17 may want to point out about him is that he's  
18 habitual late to work.  
19 Q Have you ever spoke to anyone about  
20 these problems with Mr. Galindo?  
21 A Of course I did.  
22 Q Did you speak to Mr. Sung about these  
23 problems with Mr. Galindo?  
24 A About once or twice I spoke to Mr.  
25 Sung about that.

135

1 M. KIM  
2 Q What did you speak to Mr. Sung about?  
3 A Well, we did discuss about him being  
4 excessively late, but we concluded that even  
5 though he's excessively late, he is very  
6 capable in other areas of his work, that's why  
7 we just decided to dismiss that issue. And we  
8 really did need his work because we had  
9 frequent turnover for grill man's job.  
10 Q Did you ever consider disciplining  
11 Mr. Galindo?  
12 A I have to say no, because if we did,  
13 do you think it's possible that he could still  
14 be working there. I actually would like to  
15 express one incident.  
16 Q Why don't we wait until we get  
17 through these questions. Time is running out  
18 and I have several more pages of questions to  
19 ask you.  
20 Did you ever ask for advice from Mr.  
21 Sung about what to do about Mr. Galindo?  
22 A I want to tell you that I did mention  
23 to Mr. Sung what I'm unhappy about with respect  
24 to Mr. Galindo, so I issued the complaint,  
25 addressed the complaint to the Mr. Sung, but no

136

<p>1 M. KIM</p> <p>2 actions or no discipline was taken to Galindo,</p> <p>3 that's why he's still working.</p> <p>4 Q Was it Mr. Sung's decision not to</p> <p>5 discipline Mr. Galindo?</p> <p>6 A Actually Mr. Sung is very aggressive</p> <p>7 and outspoken when it comes to making</p> <p>8 disciplinary decisions and it was actually I</p> <p>9 who decided to keep Galindo because we have</p> <p>10 worked together for a very long time and didn't</p> <p>11 want to cause any disadvantage for him.</p> <p>12 MS. BARBOSA: Okay, thank you.</p> <p>13 So I don't think I have any other</p> <p>14 questions in response to the 30(b)(6)</p> <p>15 deposition. So I'm going to just turn</p> <p>16 over and begin asking you questions in</p> <p>17 your individual capacity; okay?</p> <p>18 THE WITNESS: I do want to say that</p> <p>19 I have worked with Felix over ten years</p> <p>20 working like a family, but I do</p> <p>21 understand that Felix accuses me of</p> <p>22 things that are not true. He thinks that</p> <p>23 I am against him or trying to get rid of</p> <p>24 him, but if that was true, I could have</p> <p>25 found many ways to get rid of him, but I</p> <p style="text-align: right;">137</p>	<p>1</p> <p>2 ACKNOWLEDGEMENT</p> <p>3</p> <p>4 STATE OF NEW YORK )</p> <p>5 SS:</p> <p>6 COUNTY OF )</p> <p>7</p> <p>8 I, MINCHUL KIM, hereby certify that I have</p> <p>9 read the transcript of my testimony taken under</p> <p>10 oath in my deposition of May 22, 2018; that</p> <p>11 the transcript is a true, complete and correct</p> <p>12 record of what was asked, answered and said</p> <p>13 during this deposition, and that the answers on</p> <p>14 the record as given by me are true and correct.</p> <p>15</p> <p>16 _____</p> <p style="text-align: center;">MINCHUL KIM</p> <p>17</p> <p>18</p> <p>19 Subscribed and sworn to</p> <p>20 before me this _____ day</p> <p>21 of _____, 2018.</p> <p>22</p> <p>23 _____</p> <p style="text-align: center;">NOTARY PUBLIC</p> <p>24</p> <p>25</p> <p style="text-align: right;">139</p>
<p>1 M. KIM</p> <p>2 didn't. There was an incident where</p> <p>3 Felix got into an argument or fight with</p> <p>4 a coworker at which time he took out a</p> <p>5 knife, he held a knife in front of</p> <p>6 customers and Mr. Sung said to call the</p> <p>7 police, but I really didn't know how to</p> <p>8 deal with it, and didn't want to put him</p> <p>9 into trouble, so I managed to reconcile</p> <p>10 the situation, and I tried to help him</p> <p>11 keep his job. So I'm trying to explain to</p> <p>12 you that his accusation about me not</p> <p>13 wanting him is totally false, and I could</p> <p>14 have just used his lateness alone to get</p> <p>15 rid of him because I could have warned</p> <p>16 him many times and then if he's still</p> <p>17 late, which he was, I could have just</p> <p>18 used that grounds to fire him which I</p> <p>19 didn't.</p> <p>20 MS. BARBOSA: Okay. Thank you. I</p> <p>21 have some questions I want to ask you</p> <p>22 now.</p> <p>23 (Whereupon, the Examination Before</p> <p>24 Trial of this witness was concluded at</p> <p>25 3:54 P.M.)</p> <p style="text-align: right;">138</p>	<p>1</p> <p>2</p> <p>3 INDEX</p> <p>4 WITNESS BY PAGE</p> <p>5 MINCHUL KIM Ms. Barbosa 4</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 PLAINTIFF'S DESCRIPTION PAGE</p> <p>9 1 Notice 20</p> <p>10 2 Plaintiff's First</p> <p>11 Request For Production</p> <p>12 of Documents and</p> <p>13 Interrogatories 27</p> <p>14</p> <p>15 3 Defendant's Responses to</p> <p>16 Plaintiff's Request For</p> <p>17 Production of Documents 33</p> <p>18</p> <p>19 4 Staff expenditure 58</p> <p>20</p> <p>21 5 Payment Report 70</p> <p>22</p> <p>23 6 Staff expenditure 81</p> <p>24</p> <p>25 7 Staff expenditure 90</p> <p style="text-align: right;">140</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: center;">CERTIFICATE</p> <p>I, KATHLEEN ANDERSON, a Notary Public of the State of New York, do hereby certify</p> <p>That the testimony in the within proceeding was held before me at the aforesaid time and place</p> <p>That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.</p> <p>I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.</p> <p>IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of June, 2018.</p> <div style="display: flex; align-items: center; justify-content: center;"><div style="text-align: center; margin-right: 10px;"><p><i>Kathleen Anderson</i></p><hr style="width: 100px; margin: 0;"/><p>KATHLEEN ANDERSON</p></div><div style="text-align: center;"></div></div>
141	